

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

Invest Europe

* 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 European private equity industry appreciates to be consulted on the potential review of the PRIIPS Regulation.

We would like to use this first question to remind ESAs of the specificities of the private equity industry and the implications this can have on the way managers we represent would prepare Key Information Documents – and how valuable these documents would be for their investors.

In general, we insist on two key aspects:

- many of the investors into our asset class are very experienced despite not having the professional label
- the illiquid nature of our asset class makes some of the "standardised" elements of the KID at best irrelevant or at worse confusing for the investor

As a general reminder, our industry covers a wide range of closed-ended fund managers which share the same business model:

- raising capital from investors
- "pooling" into long-term (typically 10 years), illiquid, closed-ended and unleveraged funds
- investing it in direct equity investments into a dozen of businesses for an average of 5 years
- actively supporting the growth of these businesses, thanks to both the capital and the know-how of managers

- once they have grown and/or evolved, selling the shares either through an IPO or a trade sale

Such a model implies a different path to profitability than public ones. At least a few years will be required before the capital committed, and the actions taken by the manager bear fruit. The fact that selling early is essentially not an option for any private equity investor makes it de facto a long-term, illiquid investment. The consequence is that, while private equity is by no means in itself a complex investment, committing capital to a private equity fund does require careful consideration and a strong liquidity profile from investors.

Sources of capital that flow to the asset class reflect this. Professional and knowledgeable investors being less likely to have to sell their interests in the fund before the end of the fund's life, at least 80% of investments comes from investors that are by definition classified as professional under the MiFID investor categorisation and around 5% from corporates (which are likely to also be eligible given their typically large size).

As half of the remaining share will come from institutions, such as universities, or family offices or foundations (9%), "true" private individuals only constitute around 7% of the private equity investor base:

These can be divided in 3 sub-categories:

I. Sophisticated investors with (very) large amounts of capital at hand (committing more than €100K in a single investment)

We have long argued, in other contexts, that these investors should never have to receive a KID as they are effectively as experienced and knowledgeable as other professionals.

II. Investors with a good understanding of the market looking to invest capital with no liquidity concerns (investing typically between €5K and €100K in a single investment)

In all likelihood, these investors will access the asset class through intermediary MiFID firms. We do not dispute that these investors will require a KID – and most of our responses will relate to the marketing of products to these clients (typically through national retail regimes or through ELTIF structures).

III. Small, often inexperienced investors, with liquidity concerns and investing typically small amounts (below €5K)

The very long-term nature of the private equity asset class and liquidity concerns of small retail investors undeniably make it difficult for them to access the asset class directly, either because of their own risk profile or because it is too costly for managers to grant them redemption rights.

Private equity KIDs are therefore not typically prepared for this type of clients. These clients will however have exposures to private equity while buying a packaged pension or insurance product – which will itself be subject to the KID.

3. Call for evidence

3.1 General survey on the use of the KID

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?

It is our understanding that most private equity products will have a comprehension alert as only plain vanilla retail products will not be subject to this requirement.

Nonetheless, we would argue that a typical private equity product – which is essentially a package of investments into 10-15 real businesses – is not in itself a “complex” product, albeit an illiquid and potentially risky one.

The mention of such an alert is therefore not very helpful for some products and a “long-term alert” (and the risk assessment) would give more valuable information to the inexperienced retail investor. The alert recently introduced in the ELTIF framework would be a good example in that regard. ELTIF indeed could in the future require a “clear written alert that the product may not be suitable for retail investors that are unable to sustain such a long-term and illiquid commitment” for investments longer than 10 years.

For experienced investors described in our introduction (sophisticated clients), our experience is that the comprehension alert is in practice often disregarded as something of little relevance and value to determine whether to make an investment or not.

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?

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

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

We feel that such comprehension alert is not helpful in itself and might be considered as a deterrent.

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.

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

The collection of data and the use of IT tools to store it generate important costs. The calculations and their verification are the most time consuming and require the most control. Given the small average size of private equity firms, these activities are often outsourced and bear an important cost, as they have to be prepared separately from other sources of information required by the investors.

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?

As an association, we do not have any specific data on the preferences of retail investors in this respect but we believe that the way for the KID to be made available should be left up to the manager’s discretion.

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?

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

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

3.5 Scope of the PRIIPs Regulation

Extract from the call for advice:

An examination of the following questions concerning the scope of the PRIIPs Regulation:

- *whether the exemption of the products referred to in Article 2(2) points (d), (e), and (g) of the PRIIPs Regulation from the scope of PRIIPs should be maintained, in view of sound standards for consumer protection, including comparisons between financial products.*
- *whether the scope of the PRIIPs Regulation should be extended to additional financial products.*

The points referred to Article (2) of the PRIIPs Regulation concern:

(d) securities as referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC;
(e) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;
(g) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

In 2019 the ESAs published a Supervisory Statement on the application of the scope of the PRIIPs Regulation to bonds (JC 2019 64). In this statement it was stated that:

Ultimately, in order to fully address the risk of divergent applications by NCAs, the ESAs recommend that during the upcoming review of the PRIIPs Regulation, the co-legislators introduce amendments to the Regulation in order to specify more precisely which financial instruments fall within the scope of the Regulation. We would also recommend to reflect more expressly the stated intention of the PRIIPs Regulation^[1] to address packaged or wrapped products rather than assets which are held directly, to avoid any legal uncertainty on this point.

Taking this Statement into account, the ESAs are interested in feedback on a number of additional issues besides those specified in the mandate from the Commission. Thus, concerning the topic of scope, the ESAs would like to ask the following questions:

[1] This is stated in recitals 6 and 7.

20. Do you think that the scope of the PRIIPs Regulation should be extended to any of the products referred to in Article 2(2), points (d), (e) and (g)? Please explain your reasoning.

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

We believe that the scope of the PRIIPs Regulation should be reconsidered as quickly as possible to ensure the KID only has to be offered to individuals who really require it. See our more detailed response to Question 26.

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

We would like to use the opportunity of this question to comment on the treatment of carried interest and co-investment arrangements, which we believe could be carved out more clearly from the scope.

As a way of background, private equity funds commonly have in place arrangements which permit executives to invest alongside the funds they manage – typically also an investor requirement. Given these funds are predominantly designed for institutional and professional investors, these arrangements allow team members at the fund manager to be accorded interests in a limited partnership (the “carry vehicle”) which is, in turn, a limited partner in the main fund. Executives will then be entitled to carried interest based payments only if the investors first have received back their contributed capital and any “hurdle return” above a preferred rate agreed at the outset. Co-investment arrangements will operate in a similar manner, allowing the fund manager’s staff to participate in a limited partnership which invests alongside the main fund in the underlying private equity investments.

We do not think that carried interest and co-investment arrangements fall within the definition of a PRIIP or within the spirit of the PRIIPs regime since:

- these arrangements are not “packaged” nor they are “manufactured” to provide investment opportunities to retail investors;
- they are solely open to management/ senior executives and employees of the firm respectively;

As the principal purpose of the KID is to ensure that retail investors are adequately notified of the characteristics of a PRIIP to enable them to make informed investment decisions, it indeed makes no sense for executives working in the fund manager to draft such a document for a legal vehicle which has been created for their own investment

- these arrangements form part of the private equity risk sharing model, which aligns the interests of the

fund manager and investors and ensures that the investment team has "skin-in-the-game";

- these arrangements are expected, and often required, by investors in the fund

In other words, preparing a KID for these arrangements would essentially mean the manager would prepare a KID for itself, which seems counterintuitive.

The proposal by the European Commission to revise the ELTIF framework constitutes an interesting comparison in that regard, as it clarifies that “suitability assessments should not [be] required where the retail investor is a member of senior staff, portfolio manager, director, officer, agent or employee of the manager or of an affiliate of the manager and has sufficient knowledge about the ELTIF concerned” (Article 30, paragraph 3).

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 call the legislators to clarify that a PRIIP should only be considered to be "made available" to retail investors where it is effectively widely distributed.

The publication requirement set in Article 5(1) and Article 9 gives the impression that the manufacturer is always soliciting retail investors generally, potentially drawing certain investors to asset classes that are not suitable to them. This view is reinforced by the fact that this concept is also used in the UCITS Directive – indicating again that the “made available” concept relates to mass distribution.

In a typical private equity context, the private placement memorandum and other marketing materials will on the contrary be distributed on a confidential basis to a limited number of investors only – typically, specifically identified high net worth individuals within the EEA (such as strategic partners in a particular industry sector). Moreover, a private equity firm will often not make any marketing materials relating to its funds generally available on its website.

It would make sense thereby for the requirement to produce a KID not to apply where a manager distributes a fund on a private placement basis, e.g. where marketing materials are distributed to fewer than 150 retail investors per EEA member state. This would be consistent with the thresholds set in the Prospectus Regulation.

Arguably, this might reasonably be addressed through Q&A without necessarily requiring an amendment to the legislation.

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. We comment on this from our perspective as sellers of closed-ended, illiquid products. Seeking to present the information in a uniformed manner may end up confusing the investor – as it will give him/her the sense that products are inherently comparable and similar – which they may not always be. This is especially problematic within the investment product category – where non-traded products such as private equity or real estate are fundamentally different from others (and sometimes more different than insurance products can be from other investment products).

The primary goal of the KID should remain to offer the investor information on the key characteristics of the product itself (for example, in a private equity context: the lack of redemption rights, the importance of the managers' skills in driving a return or the impact of carried interest) - allowing her/him to make an investment decision on that product specifically.

On the other hand, the KID should not always seek to compare between financial products with fundamentally different features. From our perspective, many of the “sins” of the KID originate from this overambitious “standardization” objective.

More specifically, in a private equity context the KID should not necessarily:

- force managers to give performance and cost scenarios over different periods despite the product having no redemption rights and periodised scenarios.

Irrespective of any added narrative, this may give the false impression that selling before the end of the fund term's is more of an option than it is.

- present costs of investing into long-term products in the same way as products that have daily price quotes

The presentation of carried interest is a good example of this. As a reminder, carried interest is an agreed percentage, at the fund's onset, of the cash profits of the fund indeed. It is only paid out to the manager and /or to its executives who participate in the carried interest arrangements once the external investors have received back all of their drawn down capital, plus an agreed preferred return (typically 8% p.a. on the investors' drawn down capital).

A "standardized way" to present carried interest, for example as a percentage of the investment if you exit after one year and based on an average performance scenario, will likely lead to a situation where the retail investor will have an impression no amount will be paid, which will not necessarily be true (especially as the investor will not be in a position to exit after a year).

A "simple" way would be for the KID to contain a short sentence describing that the fund is subject to a profit-sharing mechanism above a certain hurdle – which would give the investor all information he or she needs to make the investment.

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

Yes. As explained above, trying to give investors information in a too simplified and too standardised manner, the KID ended up confusing them about the basic nature of some of the products offered.

For example, for closed-ended private-equity funds – and more generally for similar types of illiquid funds - the first two scenarios in the cost table simply do not reflect the nature of the fund. In the private equity case, we believe it would be more appropriate to give the fund manager the explicit opportunity to only present a holding period that corresponds to the full life of the fund. This would allow the investor to have a more appropriate idea of the length of time it will have to hold the PRIIP and avoid giving her/him the impression that there is an opportunity for him/her to surrender its investments at some point before the end of the fund's stated lifespan. There may however be side clarifications of what happens in case of exceptional events such as deaths or illnesses that lead to redemptions.

More generally, we feel that the investor in the fund will be better informed of the illiquidity of the product through a clear disclaimer that there is no or limited opportunity to redeem its commitment before the end of the life of the fund. Such disclaimer will have a higher informative value for the investor than two columns describing the cost of leaving it after a given number of years, which may give investors the impression this is a frequent option.

From a risk and performance angle, the same is true for the use of specific methods of calculation which may be suitable for liquid markets but will not always be relevant in other contexts.

By trying to create a "one-size-fits-all", the KID may create false expectations – especially on products such as private equity where the ultimate success of the fund will depend less on past performance or market indexes than on the manager's ability to grow real businesses. We believe this is ultimately creating more risks than benefits for the investors.

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

3.7 Complexity and readability of the KID

Taking into account the views previously expressed by some stakeholders that the information in the KID is overly complex and contributes towards an information overload for the retail investor, the ESAs would like to ask for suggestions on how the KID could be improved in this respect.

There can also be a link between this issue and the use of techniques such as layering as referred to above in the context of the digital KID (see Section 3.4), as well as other design techniques, such as the inclusion of visual icons or dashboards at the top of documents[1].

[1] Dashboards can include the most essential information at the top of the document. This is the approach taken, for example, for the PEPP KID - "PEPP at a glance" in Annex I of PEPP Delegated Regulation 2021 /473 point 4 and the template in part II.

31. Would you suggest specific changes to Article 8 of the PRIIPs Regulation in order to improve the comprehensibility or readability of the KID?

In general, private equity managers find that Article 8 is too prescriptive, leading to difficulties in filling out the KID.

As mentioned above, the current rules make it complex for fund managers to make some of the key features of the industry visible, including the non-redeemability of investments and the nature of underlying investments which, contrary to most liquid assets, are not basket of securities but actual stakes in businesses.

Article 8 should be amended to give more flexibility to managers to inform clients about the nature of the products they offer.

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

We understand the objective of raising the attention of retail investors on the specificities of such funds. However, such comprehension alert is not helpful in itself and might be considered as a deterrent.

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

Please find further comments on the comprehension alert in section II.

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

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

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

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

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

In the case of private equity funds, the first two performance scenarios are not helpful because calendar references (one year and five years) are totally disconnected from the products, which are closed-end funds with a life of 10 years. Performance scenarios should therefore be more consistent with the investment horizon of the relevant products.

Please find further comments on past performance scenarios in section VIII.

- Article 8 paragraph 3 (f) on costs:

Investors generally pay attention to information on costs and to the break down the different cost items and their respective weight. However, some of these elements are not fully relevant to retail investors, and some others might not be adapted to private equity funds.

- Generally, some elements shown in the KID are not fully relevant to retail investors and the level of detail on fees should be adapted. Retail investors are mostly interested in the total cost of their investment, not necessarily in the breakdown of the different cost items.
- Moreover, some cost disclosure requirements are not adapted to the specificities of VC/PE funds.

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

Also, a clear distinction should be made in the breakdown of costs between carried interest and performance fees. As explained previously, a clear differentiation should be made between a performance fee and a carried interest; these two items should be treated in separate rows of the KID (see answer to Question 28 for the explanation on carried interest).

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

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

We are agnostic regarding the structure that is used – provided there is sufficient flexibility for the manager to inform the client about the nature of the product.

As explained in other parts of this response, the information should be less standardised to allow managers offering products with different characteristics to alert clients about these characteristics. Any visual icon or dashboard should be sufficiently adaptable to take this into account.

We would like to take this opportunity to highlight the fact that the KID may not always be a paper document

but may be an internet page on a website. This should be taken into account when designing the format of the KID. Conversely, the cost of complying with new requirements should be considered and producers should be allowed some time and discretion to implement any new changes to the format of the KID.

3.8 Performance scenarios and past performance

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

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

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

Besides the issue of past performance, the ESAs' work under the empowerment in Article 8(5) regarding the methodology underpinning the performance scenarios has raised significant challenges. Since the ESAs first started to develop these methodologies from 2014 onwards, it has proved very difficult to design appropriate performance scenarios for the different types of products included within the scope of the PRIIPs Regulation that would allow for appropriate comparisons between products, avoid the risk of generating unrealistic expectations amongst retail investors and be understandable to the average retail investor. In particular, no academic consensus has been reached on how to develop common performance scenarios that would be equally appropriate for all types of PRIIPs, proving the inherent difficulty of such an approach.

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

[1] EIOPA's Board of Supervisors agrees on changes to the PRIIPs key information document | Eiopa (europa.eu).

[2] Implementing and delegated acts | European Commission (europa.eu)

[3] JC 2020 66 (30 June 2020)

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

Yes. We support the recent ESAs' clarification that past performance should not be given for closed-ended funds where such performance effectively does not exist.

As a way of background, past performance is a more relevant factor for open-ended funds which continue to

operate for many years under similar parameters. In private equity, or for any type of closed-ended funds, past performance would always have to be based on previous funds ran by the management team or comparable funds.

As private equity funds invest into businesses - as opposed to a basket of securities linked, for example, to a volatility index, a fund' success will primarily depend on:

- extensive due diligence - to “handpick” the right companies to invest in
- managerial skills - as managers often take an active role in the company to ensure its success
- macro-economic and industrial trends, i.e.: the business environment

The first two factors may be relevant for funds previously ran by a same management team (although it will not account for the accumulated experience of the management team) but they will not be for a comparable fund. Contrary to passive funds based on listed indexes, the performance of a fund may vary significantly depending both on the sector of investment and the expertise of the manager. It will closer to a general indication of the returns of the asset class than to a clear signal of what returns are to be expected.

Even for funds ran by the same management teams, past performance data will not take into consideration that underlying businesses invested in by the previous funds managed by the same fund manager will often be very different from the investments that will be invested in by the fund currently being raised. The very long time between one fund being raised and the next means that, even for investments in the same businesses, factors impacting the performance of previous funds could have changed during that time e.g. market environment, stage in the economic cycle, evolution of the fund management team. Compared to listed indexes, these factors that are even harder to summarise in a simple document.

Past performance information therefore carries the danger of over-emphasizing temporary depressed market conditions previous private equity funds have been exposed to at one stage of their lifetime, as well as being too optimistic during periods of market booms that are no longer indicative of a later exit environment.

34. Would you suggest changes to the requirement in Article 8(3)(d)(iii) of the PRIIPs Regulation concerning the information on potential future performance, and if so what would you specifically change in the Regulation?

From our perspective as closed-ended funds, we would not suggest specific changes to the Article. It seems of utmost importance to us that future performance scenarios are tailored to the relevant type of funds. As explained previously, closed-ended funds cannot be treated in the same way as open-ended funds.

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?

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