

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

Italian Banking 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.

We consider this Call for evidence very important as it offers the possibility to further analyze and contribute on some crucial issues already arisen in the recent consultation of the European Commission on the Retail Investment Strategy.

Our contribution takes into account the exchange of views with our associates which are banks and consequently affected by this Call for evidence both as manufactures and as distributors of PRIIPs.

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?

N.A.

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?

Distributors analyse investment products accordingly to their product governance obligations and, more in details, when they define and approve the range of investment products they intend to distribute to their clients.

This activity is carried out by each distributor accordingly to its internal policies and procedures, which identify the specific information sources which have to be considered in order to properly select investment products.

The information sources used by distributors in accordance with their policies and procedures are not usually represented by the KIDs and, more generally, by specific documents. Intermediaries select the list of manufacturers and the list of investment products issued by these manufactures on the basis of specific parameters consistent with those adopted within their suitability procedures, which can be provided both by external sources (included the EMT flow of information provided by manufacturers) and internal sources.

Consistently with PRIIPs Regulation distributors use the KID in order to provide clients with information regarding the specific investment product they want to buy or subscribe in order to support their investment decisions.

Distributors on-line platforms:

- provide clients with the KID regarding the specific investment products selected by the clients themselves;
- offer to clients the possibility to compare investment products on the basis of several parameters

considered mostly relevant and then allow the access to the KID, but the KID is not proposed by the platforms as a way to compare different investment products.

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?

See our answer to Q3.

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?

Being a banking association we are not in the position to answer to this question.

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

Marketing materials aim at attracting attention on some investment products and consequently have a very concise content and a simple and direct language and can include images or icons. Their only requirement regards the need to ensure consistency with the relevant KIDs and to include a reference to the website where they are available.

In our view KID purposes are very different from those relating to marketing material. First of all, KID is a regulatory document whose aim is to compare products within one category using one unique set of metrics such as risk indicator, scenarios analysis, and cost table calculation.

The KID is not a marketing document and should not be used to replace marketing brochures/ADVs of structured products.

Moreover, marketing material have to comply with requirements originating from different sources, other than PRIIPs Regulation, for instance most notably suitability tests under MiFID, or National competent authority requirements, as it is the case in Italy.

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?

As far as we know, the KIDs regarding OTC derivatives and structured investment products (e.g. certificates, covered warrants, structured bonds) include such 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?

N.A.

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

PRIIPs are not simple investment products by regulatory definition. We therefore do not understand the real added value and benefit for retail investors in being alerted on the complexity of the products, which is actually made clear enough by the structure and content of the whole KID.

Moreover, we underline that this alert is standardised and consequently not related to the level of actual financial knowledge and experience of each retail investor.

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

Being a banking association we are not in the position to answer to this question.

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

Distributors do not consider the comprehension alert at all because they must verify the suitability (or appropriateness) of each investment and they must consequently verify whether the specific level of financial knowledge and experience of each retail investor, which has to be assessed in line with MiFID II requirements, is compatible with the characteristics of the relevant investment product.

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.

Not being a manufacturer, it is not possible to us to provide specific information about the cost of manufacturing PRIIPs KID.

However, as far as we know, the cost of manufacturing PRIIPs KID depends on:

- the model adopted by the specific intermediary for producing PRIIPs documents (e.g., which activities are carried out internally or carried out by a third-party supplier, and to what extent);
- the nature of the products (e.g., some products require the KID to be updated more frequently than other products, which may imply an higher cost).

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.

See our answer to Q12.a).

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?

See our answer to Q12.a).

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

The current PRIIPs regulatory framework allows EU Member States to impose specific requirements upon investment firms established on their national territory and which manufacture PRIIPs products. These “optionalities” have generated, so far, misalignments and inconsistencies in the PRIIPs regulatory framework currently applied across the EU. We deem it necessary to review the rules regarding optionality to promote more uniform implementation of the PRIIPs regulatory framework within each EU Member State.

A specific example regards the ex-ante notification of KIDs to NCAs.

Under Article 5 paragraph 2 of Regulation 1286/2014 any Member State may require the ex-ante notification

of the KID by the PRIIP manufacturer or the person selling a PRIIP to the competent authority for PRIIPs marketed in that Member State. As far as we know, some EU Member States have decided to exercise the aforementioned option. To the best of our knowledge, the relevant national rules differ as to many respects and, namely, in relation to: i) the scope of the notification obligations and related exemptions, ii) the deadline for filing, iii) the entities subject to such obligation, iv) the technical solution for filing, and v) language requirements.

With specific reference to Italy, this requirement had been introduced for the first time in 2016. It was however repealed in 2019 (Legislative Decree 25 November 2019) alongside the delegation to CONSOB of the power to identify, by means of a Regulation, the modalities for the authority to access KIDs before PRIIPs are distributed in Italy, taking into account the need to reduce the burdens on supervised entities.

In July 2020, CONSOB proposed the adoption of new Operating Instructions to regulate the modalities by which the Authority may gather PRIIPs KID and launched a consultation thereon. Consob proposed the requirement to make available to the Authority, by means of automated procedures, not only information included in KID, but also additional information used in the process of KID production and other information regarding PRIIPs to which KID refers. During the consultation, concerns were expressed that CONSOB proposals would have introduced an additional and burdensome requirement, as in many cases the information requested is not available to intermediaries.

Overall, the fundamental objection raised towards the aforementioned requirement was that, as a result, it would have de facto frustrated the fundamental objective to reduce the burden for supervised entities and introduced unnecessary operational obstacle for the Italian market, not in line with the CMU objectives and implying a significant competitive disadvantage to the detriment of Italian manufacturers of PRIIPs as well as of foreign manufacturers of PRIIPs willing to distribute their products in Italy.

Based on the feedbacks from stakeholders, as an outcome of the consultation procedure, some original proposals have been:

- revised, e.g., the timing of the entry into force of the new requirement for transmitting structured data with the introduction of a transitory regime until 31 December 2021; similarly, the obligation to make available to CONSOB information and structure data regarding PRIIPs will apply from 1 January 2022 onwards; or
- repealed at all, e.g., the i) reference to the EPT ii) the reference to some structured data not included in the KID or difficult to manage and iii) the reference to the timeline for making KID available in FTP server of CONSOB.

What happened in Italy provides a clear example of the potential inconsistencies and misalignments due to the “optionalities” envisaged in the PRIIPs regulatory framework currently in force.

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?

N.A.

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 far as we know an increasing number of retail investors likes to receive the KID by email or on their reserved area of the on-line banking and to open/download it by their IT device (e.g. smartphone, tablet, computer).

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

Being a banking association we are not in the position to answer to this question.

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

As indicated in the following answer, the very important change regards the switch from paper to electronic format as it regards the default option. This implies that the KID is delivered in PDF and can be easily:

- recorded in each different version by manufacturers and distributors;
- downloaded, saved and eventually printed by retail investors.

On the contrary, we do not see the of adopting a digital structure like the one admitted by the PEPP Regulation, as it:

- does not offer real added value with respect to the PDF delivered in electronic format;
- would request high investments and costs for manufacturers which result disproportionate.

In fact, we have to underline that:

- while PEPPs are simple products and long term whose perspective numerosity should remain in any case limited;
- PRIIPs include many products with short (also very short) term, very complex structure which is difficult to be properly illustrated in different layers, have frequent changes and consequent needs for updating.

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

See our answer to Q17.

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

We expect electronic format should be the largest mean of documental distribution, however providing paper format upon request can cover investors who still do not own any IT device.

In order to achieve this goal, we deem it appropriate to amend Article 14 of the PRIIPs Regulation so as to make the electronic format the default option for providing KID. However, the option to receive KID on paper format should be given to retail investors and persons advising on, or selling, PRIIPs should inform these investors about their right to request a paper copy free of charge in case of face-to-face meetings.

Paper-based documents should not be required, even upon client's request, during meetings and execution via distance communications media (telephone, internet, e-mail, etc...).

We believe that the proposed approach could strike the right balance between, on the one hand, the need to recognize the existence of increasing consumer demand for and use of online services and, on the other hand, the need to recognize that not all investors have so far access to digital devices.

But we underline the need to properly evaluate the necessary period of time which is needed by manufacturers and distributors in order to adapt their internal procedures. More in details, we ask to adopt a

different approach from the Directive 2021/338/EC (so called Quick Fix MiFID II) which did not take into account the complexity of the changes required to distributors to comply with its provisions regarding the electronic format.

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.

We do not see compelling reasons for amending Article 2 paragraph 2:

- lett. d) of the PRIIPs Regulation, as the products therein lack the distinctive feature of the PRIIPs represented by the fact that “the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor”. But we ask to update the correct identification of these products by substituting the

reference to the Directive 2009/138/EC with the Regulation (EU) 2017/1129;

- lett. e) and g) of the PRIIPs Regulation and, in particular, for including within the scope of application thereof pension products which, under national law, are recognized as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits. In our opinion, these products have peculiarities and objectives which do not make PRIIPs Regulation the best legislative mechanism for ensuring appropriate disclosure relating to these products. Namely, these products are characterized by different features vis-à-vis the products falling within the scope of PRIIPs Regulation e. g. time-horizon, conditions to access them, options available to participants, potential benefits, risk profile etc.

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 do not consider necessary any change, but rather a more precise definition as below indicated in our answer to Q24.

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

See our answer to Q24.

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?

N.A.

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

All in all we agree with the ESA Supervisory Statement relating to bonds. But we believe that bonds with a “make-whole clause” as defined by Directive 2021/338/EC should be clearly considered as a specific type of bonds out of the PRIIPs scope.

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 believe the current definition framework is sufficient and exhaustive. Any addition of new elements or criteria identifying the scope of the regulation would lead to a necessary reconsideration of the scope (which is now consolidated after years of analysis and practical application).

Therefore, the only changes which are necessary in our opinion are those indicated in our responses to Q24.

26. Do you think that the concept of products being “made available to retail investors” (Article 5(1) of the PRIIPs Regulation) should be clarified, and if so, how?

We do not consider it is necessary to provide more clarification on this regard. Moreover, we remind that the target market (required by manufacturer regulated by MiFID II and IDD) indication is clear enough.

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

We do not recommend the development of a taxonomy of the “type of PRIIP” for the following reasons:

- as far as structured products are concerned, the evolution of structured product “taxonomies” or any product type standardisation efforts, should be left to market participants given that product types constantly evolve;
- it requires constant and frequent update (i.e. when new wrappers or products are created);
- it may lead to disagreement between countries;
- it could lead to misclassification of products given the very wide-ranging scope of PRIIPs and the various needs of counterparties;
- it may lead to mismatches with CFI codes under MIFID (for instance we have seen different clearing systems having different CFI code for the same debt instrument).

Overall, a PRIIPS product taxonomy would bring no value to retail investor. It should remain the manufacturer responsibility to adequately describe the legal wrapper and features of the product in the “what is this product section”.

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?

Some regulatory adjustments are needed with regard to the KID for OTC derivatives products. Currently few adaptations are provided for OTC derivatives KID, but they are not adequate for the following reasons:

- they are only provided by the Q&As released by Joint Committee of ESAs instead of being regulated by Delegated Regulation. Consequently, they are available only in English, and not in other official EU languages;
- they use different terminology to refer to same concept: e.g. “notional amount” and “nominal amount”;
- they do not take into accounts the real nature of the following transactions: i) in case of OTC Derivatives with physical delivery the client is exposed to performance of assets that are directly purchased by client or is not exposed to any fluctuations. For instance: in a forex forward deal client buys a certain amount of a currency in exchange of a certain amount in another currency. In this deal there are no fluctuations of the amounts to be paid and received by client, in the respective currencies, as the amount are pre-defined at inception and there is no impact on the market fluctuations; ii) in case of OTC Derivatives with hedging purpose, the client is exposed to performance of an asset to which the client is already exposed, and the deal is executed to reduce the risk of their exposure.

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?

From market’s experience, clients are not really relying on the information provided by KIDs when they are interested into OTC Derivatives, as the information reported in the document, and relevant terminology, is not really reflecting the features of OTC Derivatives products, in particular when they are executed for hedging purposes. For this reason, it should be useful to define a set of outlines that can give to the retail investor a comprehensive view of the product and the underlying.

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

See our previous response to Q27.

Regulation should consent exemplificative KIDs also for other bespoke OTC products.

We refer to OTC Derivatives, where the KID represents the product without the need of having a KID in place for each bespoke transaction, to highlight that similar approach should be in place for other bespoke products, such as structured deposit, where a product could be sufficiently described by an exemplificative KID without the need to release a specific KID for each tailor made transaction/deal executed with the investor.

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?

We do not have any suggestions on this regard.

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

Apart from what we said in response Q18, in our opinion the current structure, format, order of the sections and presentation of the KID is satisfactory and has met its objective. We strongly recommend not to change the layout of the KID by modifying the Level1 text.

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

PRIPs 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 PRIPs, 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 PRIPs 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' assessment in the Final Report (JC 2020 66) regarding the treatment of past performance.

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

In our view Article 8 (3) (d) (iii) should be left unchanged in Level1, and rather address details of the assumptions to be made for performance scenario in a later Level2 review, depending on the product scope.

On the contrary, as far as it regards assessment in the Final Report (JC 2020 66) regarding the new specifications for auto-callable products, which imply consistency amongst different holding periods at scenario level (e.g. Favourable, Moderate and Unfavourable), we underline that they could mislead the final investor, who could be induced to believe that very similar non auto-callable products, for which the scenario values for each holding period are currently calculated and sorted independently, have a better performance during their lifetime. On the other hand, we believe that a change in methodology also for non auto-callable products would be disruptive for the retail investor as it would require a total new way of interpreting the performance scenarios.

3.9 PRIPs offering a range of options for investment (Multi-Option Products ("MOPs"))

In the ESA Consultation Paper of October 2019 on proposed amendments to the PRIPs 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 PRIPs Delegated Regulation), it is difficult for the investor to identify the total costs related to a particular investment option. This arises because the generic KID shows a range of costs, but does not always identify which costs are specific to an investment option and which costs relate to the insurance contract. At the same time, it is understood that the information on the underlying investment option (in accordance with Article 14 of

the PRIIPs Delegated Regulation), does not usually include the total costs of investing in that option. Therefore, it is often not possible for the investor to identify from the generic KID the costs that may apply in addition to those shown in the option-specific information.

One of the proposals in the Consultation Paper was to introduce a differentiated treatment for the ‘most commonly selected investment options’ (page 52). In the final draft RTS following the consultation, the proposals relating to the most commonly selected investment options were not included taking into account various implementation challenges raised by respondents to the public consultation.

However, the ESAs introduced some specific changes to the approach for MOPs, for example to require the separate disclosure in certain cases of the costs of the insurance contract or wrapper. It was considered that these changes would result in material improvements to the current KID. At the same time, despite these proposed changes, there are still considered to be material issues that were not possible to address within the constraints of the review of the PRIIPs Delegated Regulation.

In the Final Report (JC 2020 66), the ESAs also stated at that stage that they consider the optimal way to address the challenges for MOPs is to use digital solutions, but that this would require changes to the PRIIPs Regulation.

As part of the May 2021 consultation from the Commission on the Retail Investment Strategy, feedback was also requested on the approach for MOPs to require a single, tailor-made KID, reflecting the preferred underlying investment options of each investor, to be provided.

In this context, the ESAs would like to ask for feedback on the following questions regarding potential alternative approaches for MOPs that might require a change of the PRIIPs Regulation:

35. Would you be in favour of requiring a KID to be prepared for each investment option (in accordance with 10(a) of the PRIIPs Delegated Regulation) in all cases, i.e. for all products and for all investment options[1]? What issues or challenges might result from this approach?

[1] This approach assumes complete investment in a single investment option and requires the KID to include all costs.

We are in favour of this approach, under the condition that the KID also includes the costs of insurance contract (when applied).

This approach is consistent the indications provided at national level by the “Arbitro per le Controversie Finanziarie (ACF)” for the extra-judicial resolution of disputes between non professional investors/non qualified counterparties and financial intermediaries. The ACF:

- became operational in January 2017
- falls under the institutional remit of the Italian National Competent Authority, CONSOB;
- is in line with MiFID II and, in particular, with Article 75 paragraph 1 which requires Member States to ensure the setting-up of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms.

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?

See our answer to Q35.

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?

See our answer to Q35.

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?

See our answer to Q35.

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?

Notwithstanding the progress made by the ESAs' final draft RTS, some inconsistencies between the PRIIPs KID and the ex-ante disclosure on costs and charges required by MiFID II to investment firms remain as far as it regards:

- the cost of products, due to the fact that according to the ESMA Q&A No 13, third party payments received by investment firms in connection with the investment service provided to a client shall be itemised separately within the aggregated costs and charges and deducted from the relevant product costs. This implies that product costs illustrated in the ex-ante costs and charges disclosure provided by investment firms are different and lower than those illustrated in the PRIIPs KID;
- the ex-ante costs and charges disclosure provided by investment firms illustrates costs expressed both as a cash amount and as a percentage, while the PRIIPs KID illustrates costs in terms of Reduction in Yield (RIY);
- the ex-ante disclosure on costs and charges provided by investment firms, that must illustrate the cumulative effect of costs on the return of the investment without any clarifications regarding the assumptions to be used in order to calculate the potential return. We have to underline that it is not possible for investment firms to refer in any case to the return reported in the KI(I)D, taking into account that: i) the PRIIPs KID reports 4 performance scenarios, the structured UCITS KIID reports 3 performance scenarios and it is not possible to determine which of them is the most reliable; ii) the UCITS KIID does not show any prospective performance; iii) there are financial instruments without KID and KIID and consequently without any perspective performance. For this reason, most investment firms have decided that it is more correct to avoid any indication of the potential return of the investment (i.e., considering a zero return) and have illustrated the impact of the different types of aggregated costs on the amount invested.

On this regard we deem it extremely important:

- to retain in the PRIIPs relevant provisions only the obligation to include in the KID the information regarding the ex-ante impact of the total costs of each investment product on the return of this latter, given the fact that these information are produced by manufacturers who have i) the obligation to test the product in order to comply with the product governance requirements and to develop the performance scenarios and ii) consequently, the possibility to correctly integrate the information on costs with the expected returns;
- to review the relevant MiFID II provisions requiring distributors to provide information regarding the impact of the total costs on the return of investments exclusively in the ex-post periodic costs and charges disclosure.

3.11 Other issues

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

We do not have any other suggestions.

Contact

timothy.walters@eiopa.europa.eu