

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

Schroders Investment Management (Europe) SA

* 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.

Schroders would like to both welcome and comment the ESAs' continued efforts to address the well-documented short-comings of the PRIIPs Regulation. We have actively participated in the debate throughout several years. We have taken part in relevant roundtables (such as those organised by the ESAs in 2019) and we have responded to consultations from both the ESAs (for example, the consultation in early 2020) and the European Commission (for example, as part of the retail investor strategy consultation in 2021). We have also published relevant research and thought pieces, for example, on the PRIIP KID (https://www.schroders.com/en/sysglobalassets/digital/insights/pdfs/thought-leadership/2019_september_fixing_the_priip_key_information_document.pdf), on client communications (<https://www.schroders.com/en/lu/professional-investor/insights/markets/the-future-of-client-communications/>), and on general PRIIPs developments.

Our position and our messaging have not changed. Indeed, we find that despite the multiple consultations, discussions etc. throughout the years, the improvements have been rather incremental and we are nearly at a stalemate. This may partly reflect the ongoing lack of will to amend the aspects of Level 1 regulation that are at the bottom of this stalemate. In any case, this means that all the comments and responses we have submitted previously on the PRIIPs KID content, digitalisation, the need to consider this from the investors' point of view etc., remain relevant today.

At the same time, we note that each consultation round seems to be done under time constraints, minimising the chances for a thorough and comprehensive review that will address all known issues once and for all.

For example, this call for evidence states: “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.” We appreciate that the timetable has not been laid down by the ESAs, and will continue to contribute to the ESAs and the Commission’s efforts but would like to express a concern that unless a thorough and comprehensive review of the PRIIPs framework is done, the content of the discussion and the nature of the feedback cannot evolve substantially.

To reiterate our position, Schroders fully supports the objectives of the PRIIP KID and the broader regulatory emphasis on giving investors all the information they need to make investment decisions. For that, a level-playing field of transparency is needed. However, in the effort to create a common set of metrics that apply across the very diverse universe of products that fall within the PRIIP scope, we have lost sight of the question whether this is achievable in a meaningful way. The balance between providing information that is comparable and information that is meaningful has been definitely skewed in favour of the former, thus ending up in a place where everyone provides information that is theoretically comparable but is, in practice, not in a format that investors find particularly usable.

Although PRIIPs has been envisaged as the way to close the costs and performance data gap between UCITS and other retail investment products, the evidence so far would indicate that this is unlikely to be achieved. It would also indicate that the data already available from UCITS disclosures, is going to be discontinued once the UCITS exemption expires, and replaced by data points that cannot be used in the same way. This means that we are moving further away from transparency that is meaningful for both clients and regulators.

The reason for this lies in the PRIIPs rules that:

- Despite having moved away from probabilistic scenarios, still favour a scenario approach over factual past performance information;
- Continue to require presentation of costs as a reduction in (theoretical) return instead of actual cost;
- Continue to prescribe transaction cost estimation methods that include market movement, which actually contravenes the Level 1 MiFID II regulation (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0065> Article 24, paragraph 4) which excludes costs “caused by the occurrence of underlying market risk” that are inherent in the slippage methodology (we comment further on this towards the end of this questionnaire).

We fully appreciate and recognise the continued efforts by the ESAs to address all these points and to maintain an open dialogue with industry and consumer representatives.

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?

We would expect that trade associations, national regulators and the ESAs would be best placed to provide this information.

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?

Although not a distributor we welcome these questions as these go to the heart of why the current PRIIPs KID (as well as the UCITS KIID) are generally underused. We note that a Deloitte study for the European Commission highlighted this (see our response to question 15 below). The increasing use of modern means of communication with clients (online etc) which contrasts with the existing disclosure rules that have been designed for a paper-based format is clearly one reason for this.

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?

Many current rules covering disclosure do not achieve effective communication. The mainstay of such communication, the current PRIIPs Key Information Documents (KIDs), is still very far from being understandable, reliable, or even adequate for their target audience for reasons that we have covered on repeated occasions.

We still see a great need for a real understanding of consumers, based on good research, with input from distributors, to gain insights into exactly how consumers interact not just with disclosures but with the overall process of investing. This research should not try to test pre-conceived formats and disclosures but rather start with the investor and what they would find decision-useful.

This needs to include a rethink of how the relevant information is offered in circumstances other than where there is a direct sale of a single fund from a product manufacturer. In doing so, we would recommend allowing digital delivery and interaction with key information that allows personalisation and customisation. Additionally, we should complement risk disclosures with clear explanations on volatility, product specific risks (incl. the risk of leaving money in savings accounts i.e. “the risk of not taking risk”) and potential pension gaps, as well as work on consumer-friendly language across Member States.

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?

We have little experience of using the comprehension alert given the PRIIPs we provide are primarily non-complex products (non-structured UCITS funds or non-UCITS funds that invest in a way that does not trigger the need for a comprehension alert).

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

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

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

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

3.3 Survey on the practical application of the rules

Extract from the call for advice:

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

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

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

12. For PRIIP manufactures or sellers:

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

The main cost driver this is the complexity of the calculations for cost, performance scenarios and the SRI. These require data from external data vendors which was not the case with UCITS. Data vendor costs alone contribute about 17% of the total cost.

It is important to stress that any figure given significantly understates the costs associated with producing KIDs. This is because it does not take into account time that had to be redirected from other activities in order to understand the calculations, keep up with the changing rules, and implement this as part of the

business operations. It also does not capture additional costs involved with producing the corresponding reporting that individual clients will need in order to produce their KIDs.

Finally, depending on the ongoing negotiations of the UCITS “quick fix”, the cost of producing the PRIIP KID may not “replace” the cost of producing a UCITS KIID but rather adds to it if we will still need to prepare both documents.

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.

We estimate the costs of a single PRIIPs KID (cost in € per individual product) at EUR 19. As we have responded to the relevant section in the European Commission’s retail investor strategy consultation (question 5.6), we produce over 50,000 key information documents and the total costs for UCITS run to about €705,000 and the total costs for PRIIPs run to about €960,000.

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?

There are examples of national regulators who have taken a different approach to transaction cost disclosure in order to handle the issue of negative transaction costs. Namely, in some cases there is guidance recommending setting a floor of 0 if the total transaction cost number (sum of explicit and implicit transaction costs) is negative. So instead of reporting negative transaction costs, a product reports 0 transaction costs. We strongly believe that this is highly misleading (both negative transaction costs and excessively high costs are symptom of the flawed methodology and this approach clashes with other obligations to be clear, fair and not misleading to investors).

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?

The increasing use of online interfaces instead of paper when investing is a further barrier to consumers reading the KID. This is a topic on which Schroders has carried out and published research (https://www.schroders.com/en/sysglobalassets/digital/insights/pdfs/thought-leadership/the_future_of_client_communication.pdf - NB: the latter paper was written before Schroders Global Fund Centre was fully available to the public, see <https://www.schroders.com/en/lu/private-investor/fund-centre/gfc/fund/search/filter/type=fund,broad-asset-class=all,collection=all/>). Recent results from the Schroders Global Investor Study (22,000 consumers from 30 countries; see https://www.schroders.com/en/sysglobalassets/digital/insights/2017/pdf/global-investor-study-2017/theme2/schroders_report-2__eng_master.pdf) show that two thirds of investors use technology for choosing and managing their investments. The use of smartphones and tablets poses an additional complication. Namely, a 3-page pdf of a PRIIP KID is either illegible on a smartphone due to small font size or requires significant enlargement and scrolling in both directions in order to be read (making it even more unlikely that it will be read). This creates a question to what extent delivering a KID via a smartphone or tablet is compatible with PRIIPs Regulation, Article 6(4a), which requires a document that is “presented and laid out in a way that is easy to read, using characters of readable size”. It is also worth noting that the way things are read online is quite different from the way they are read on paper where information is generally presented in a layered way rather than requiring scrolling, or where the information starts from the top left and finishes at the bottom right of a long document.

EBA’s opinion on possible amendments to the Distance Marketing Directive requests that “information should be presented in plain and intelligible language and in a readable font size, which should easily adapt to work on any kind of device”. Moreover, IOSCO has stressed that regulators need to account for the fact

that more people now make their investments in an online environment and that this differs from the, so far, more traditional means of disclosure.

That is why we very strongly agree that providing the content of the KID via an IT tool that is more interactive would be helpful for consumers in multiple ways.

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?

Very few investors read the key information document in the first place. If they do, they don't spend more than a couple of seconds on it. During preparatory discussions for the Deloitte study on online comparison tools (which is done in the context of the broader CMU agenda), some distributors reported that consumers spend an average of two seconds on the KIID/KID (UCITS/PRIIPs). This means that consumers either do not know they should read the information, aren't interested in the information, prefer the information in a more user-friendly way (such as that provided by a MiFID-compliant non-advisory platform via a smartphone), or the engagement is so minimal that it is practically the same as if not reading the disclosures at all.

Furthermore, it is almost impossible to read and understand over three pages of highly condensed information through a small screen such as a mobile phone. This shows that for regulatory documents we are still thinking in terms of paper-based disclosure, which is out of sync with consumers' increasing use of online interfaces to invest.

Schroders has built a digital solution for our clients and all external stakeholders worldwide (link to the Schroders Global Fund Centre, see <https://www.schroders.com/en/lu/private-investor/fund-centre/gfc/fund/search/filter/type=fund,broad-asset-class=all,collection=all/>). This has been set up as an online library of all funds. Each fund has a unique page showing the main characteristics in a way that is compliant with regulation and can be easily modified to reflect any regulatory changes in the future. Moreover, the page design has been developed in a way that allows clients to personalise the information that they see and compare between different funds. Users of online fund platforms will be familiar with this type of functionality. That is why policymakers need to take notice and make the most of what technology has to offer to ensure that regulated disclosure is communicated effectively instead of being dismissed as the "small print".

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?

Schroders advocates for a better inclusion of technology in the use of the underlying data provided in the current KID format. Clever use of technology can take investors to the next level, where instead of being confronted with a rigid three-page document, they could use an interface that:

- allows personalisation to adjust for each person's individual preferences for things like length of holding period and initial invested amount
- has customisable presentation allowing the choice of how key information is presented, e.g. in charts or tables
- presents content in layers so as to not intimidate with large blocks of text

Such functionality invites people to interact with the content that they see, thus increasing the chances that they will understand it and use it. To say nothing about its user-friendliness on different devices such as smartphones and tablets.

But most important of all, an interactive KID would go beyond the standard, one-off disclosure at point of sale to something that stays with clients for them to use as long as they are invested in a product.

In this context, it is worth underlying that the PRIIPS Regulation uses the word "document" and not "tool". This would imply that a digital version of the KID that remains static while the consumer is invested in a PRIIP, is possible, but the rules would not accommodate a digital solution that presents information in a more interactive way and is kept up-to-date while a consumer is invested in a PRIIP. To allow this, the Regulation would need to be amended.

Finally, it is worth noting that there are two aspects to digitalising KID information: electronic communication with the (retail) investor and electronic communication of data to intermediaries so that they can, in turn, amalgamate that data as they communicate with their end investors.

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.

Ideally there would be equivalent disclosure standards for pension products as well but (a) this doesn't have to be exactly the PRIIPs disclosures, (b) if it is PRIIPs, the known problems and issues with PRIIPs disclosure should be addressed first before extending (and perpetuating) the problems to other product universes. Having said that, it is the nature of the offering that matters, i.e. the way it is offered to/viewed by the client, and not whether it is a pension product or not. In many cases, what makes an investment portfolio a "pension product" is the tax wrapper that surrounds it.

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

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

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

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

25. Do you think that the definitions in the PRIIPs Regulation relating to the scope should take into account other elements or criteria, e.g. relating to the maturity of the product, or relating to a product only having a decumulation[1] objective, or where there is not active enrolment[2]?

[1] For example an annuity.

[2] This might include, for example, employment based incentive schemes

We think it is important to get things right for products which are within the existing scope before considering widening it. We do believe that it is appropriate to adapt PRIIPs requirements to the nature of the product – e.g. while it is not appropriate to suggest scenarios for non-structured products, this may be appropriate for a product with a fixed maturity and a particular target outcome.

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

We believe that “made available” is, in comparison, the preferable wording and quite clear in its meaning.

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?

No, we do not see benefit in the approach and think it would bring in addition complexity and lack of clarity.

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?

If we consider the UCITS disclosure, we believe that the KIID allows enough comparability between investment products. If we consider UCITS rolling into PRIIPs, then the KID will allow comparability between products, but this won't be meaningful: e.g., all PRIIPs will be showing forward looking scenarios without them making sense for non-structured products. Or all PRIIPs will be presenting cost as a reduction-in-yield but they will each assume a different rate of return.

We support the aim to apply the tried and tested standards of disclosure that have applied for some years to UCITS, to all investment-based products (incl. those within an insurance or banking wrapper). We fully believe in investment products having a similar level of disclosure. However, we would caution against a disclosure framework that strives towards 100% identical disclosures for the sake of comparability while sidelining the importance of presenting meaningful information and giving the false impression that products are 100% substitutable.

In the effort to create a common set of metrics applying across the very diverse universe of products that fall within the PRIIP scope, we have lost sight of the question whether this is achievable in a meaningful way. The balance between providing comparable information and meaningful information has been definitely skewed in favour of the former, thus ending up in a place where everyone provides information that is theoretically comparable but is, in practice, unusable to retail investors, and may, indeed, mask differences between products: E.g, the reduction-in-yield is partly used in the insurance product market, but it is a completely unknown concept in the UCITS market and is not aligned with MiFID II disclosures that investors will see on platforms or receive from advisers.

On performance, we would like to stress that it is not just the link to past performance information for non-structured PRIIPs that changes the balance. It is also the fact that the methodologies behind the performance scenarios will now differ between structured and non-structured products even if they are shown as a table in the same format. For costs, there may be comparability on the aggregate cost figure, but the separate cost components will be shown on a different basis. Structured products will assume the return of the moderate scenario. Non-structured products will assume a 0% return and show the figure only as a monetary amount. The question then is, why not go all the way and tailor disclosure according to product type and what is being offered to the investor? This is not without precedent: E.g., UCITS makes this distinction and allows structured UCITS to show scenarios and non-structured products to show only past performance. Both have disclosures on performance that are meaningful. Policymakers should also bear in mind that 100% comparability may actually have negative unintended consequences: It could lead investors to start thinking of a range of different products as substitutable while, on the contrary, investors need help to recognise and understand the differences between products.

To summarise:

- comparable levels of transparency can be achieved without having 100% identical disclosures across

different products;

- comparing products would also mean understanding the differences in the way they work and what outcome they try to achieve;

- comparability within product types (e.g. linear PRIIP with linear PRIIP) is more relevant to retail investors than comparability across products that work in very different ways (e.g. linear PRIIP with nonlinear PRIIP).

Having said that, another barrier to comparability is the paper-based format of the PRIIP KID disclosures. Retail investors barely engage with the KID of one single product. It is hard to imagine that they would be doing this with multiple KIDs for comparison purposes.

In this context, we would also like to stress that many retail investors are not just looking to buy a single fund, but a range of funds to make up a portfolio or may “buy” a model portfolio. This can result in a long stack of individual key information documents being presented to them, without individually relevant to them (certainly not for comparison purposes). The important thing for them is the overall effect, risk, cost, performance etc. of the portfolio: e.g. it is not, for example, the risk profile of the individual funds that matters, but the overall risk. This is very relevant as we are aware of distributors who, when they decide that an investor has a “3” appetite, would only include funds with a risk rating of 3 or under, whereas actually what needs to be looked at is the aggregate risk of the entire portfolio.

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?

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?

We would like to make three comments on pre-contractual retail disclosure documents and how regulators and policymakers seem to be approaching questions on their usefulness, access, readability etc.

First, there seems to be the implicit assumption that someone makes the decision to invest and then the only thing left for them to do is to read a document following which they either invest in a product or not. We doubt whether this happens ever. Even if we ignore all the process that people need to go through to end up deciding to invest, once they do decide it, the most likely (and indeed natural) thing to do, is to go to a platform or other similar online tool, get aggregated information that shows at the same time costs, returns, and risk (i.e. quantitative information) of similar products from which they can then make a choice.

Alternatively, they will liaise with an adviser who will do a similar thing on their behalf and present them with a range of similar products outlining in an aggregated fashion the key differences.

We believe it is extremely unlikely that a retail investor will read at the same time multiple documents to be able to compare them and make an investment decision. Which is why, before buying but after they have picked a product, investors will be shown a pre-contractual document that they will casually glance and effectively dismiss it as the small print. At no point will the pre-contractual document be used to help people understand investment, understand the product and make an investment decision. For this to happen, policymakers will probably need to reconfigure the entire process, assess people's needs, and recognise what procedure/route people are likely to follow to buy a product.

Second, and related to the first comment, at no point did policymakers ask people what is it that they want to know and in what format in order to be able to make an investment decision. There have been multiple consumer research exercises but these have served the purpose to test pre-conceived frameworks that had already been designed and put together without input from actual investors. Which is why we now face the issue that investors follow a very different thought and decision process in order to invest than the one anticipated and around which pre-contractual documents have been designed. Which casts doubt to whether these documents are relevant and fit-for-purpose altogether.

Finally, as stated on numerous occasions, we believe that the PRIIP KID can give rise to confusion in three ways:

- showing performance scenarios for non-structured products which is misleading, not least because this may give rise to retail investor expectations about a certain outcome, which is theoretical and can only be achieved by accident;
- showing performance scenarios as a single outcome in time which in effect is like making a projection in a straight line and masks the volatility of investing so that retail investors may be taken by surprise by the varying outcomes year on year (something that does not happen with the UCITS past performance disclosure);
- the insistence of using the slippage methodology to estimate implicit transaction costs even though there is enough evidence of funds reporting negative transaction costs because the market noise is too large to be muted by a large enough number of transactions. We anticipate a greater number of complaints once UCITS roll into the PRIIPs regime as many investors will be confronted with this.

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

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?

Having even a reference to past performance by way of a link is an improvement compared to having no past performance information at all. Having said that, we remain firmly in favour of past performance information (where available) replacing scenarios in the KID altogether. Relegating past performance to a link that investors are unlikely to follow is better than nothing but still a far cry from the tried and tested UCITS performance disclosures.

The reason for this is that, as we have repeated several times in our commentary, past performance is the only factual information that exists on performance of non-structured products and is essential for assessing delivery and accountability.

There is an additional benefit that is specific to the discrete calendar year past performance disclosure that exists within the UCITS framework. Showing that returns go both up and down is a simple way to

communicate volatility. There is evidence to suggest that investors use performance in that way from the original consumer testing of the UCITS KIID. The danger of using “straight line” projections and a snapshot of future scenarios is that they do not help investors understand the balance between short-term volatility and long-term growth.

Therefore, we are in full agreement with the ESAs’ statement in the Final Report (JC 2020 66): “past performance is key information for retail investors and consequently that the best approach is to include this information in the KID. This is because it can illustrate the actual behaviour of a product in given market circumstances and help retail investors to appreciate the volatility of the returns of the product, as well as indicate the ability of the investment manager.” We also agree with the ESAs’ assessment that having a link is the “second best” solution; the best one being reviewing the Level 1 rules, particularly to allow for different types of PRIIPs to show appropriate type of performance disclosures (and for cost disclosures to be aligned to MiFID).

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

We would recommend changing “appropriate performance scenarios” to “appropriate performance information”. This could then allow tailoring performance information disclosure to each type of PRIIPs in a way that is appropriate, e.g. the way UCITS makes the distinction between structured and non-structured products or how MiFID II (Delegated Regulation 2017/565, Article 44), specifies how performance should be disclosed if it is disclosed (different requirements apply when past performance and when future performance is shown; MiFID does not prescribe which of the two should be shown).

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?

As we have responded to the Commission's retail investor strategy consultation, it is our understanding that the European Commission has already awarded a tender to look into exactly this issue: <https://ted.europa.eu/udl?uri=TED:NOTICE:107711-2020:TEXT:EN:HTML>. According to the tender's technical specifications one of the objectives is to: "identify potential redundancies, inconsistencies, overlaps and gaps in the regulatory disclosure, suitability assessment and inducements-related rules in scope, using a mapping of the relevant rules as a basis". We expect the outcome of this analysis to inform the answer to this question as well as flag other inconsistencies in disclosure regulation. Having said that, the most serious inconsistency in cost disclosure that we would like to point out is between MiFID II and PRIIPs and regards the:

- disclosure of cost as an RIY in PRIIPs, which we think should change and follow the MiFID approach to express cost as actual cost (i.e. as a proportion of fund assets);
- MiFID aggregating the cost of investment with the cost of advice and distribution, which we think are needed but should be disclosed separately to ensure appropriate cost attribution and accountability;
- The estimation of implicit transaction costs. ESMA guidance (https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf pages 84-85) on the MiFID II rules says that the method provided in paragraphs 12 to 20 of Annex VI of the PRIIPs delegated regulation (slippage) should be used but where the cost of producing these figures is disproportionate compared to their significance, firms may use an alternative approach, such as the method provided for in paragraphs 21 to 23 of the Annex VI of the PRIIPs delegated regulation (spread methodology). This guidance, however,

seems to not be fully aligned with the actual MiFID II regulation (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0065> Article 24, paragraph 4) which excludes costs “caused by the occurrence of underlying market risk” that are inherent in the slippage methodology. Hence the use of slippage in PRIIPs is not consistent with the MiFID Level 1 rules that do not allow the inclusion of market risk in the transaction cost estimation.

We consider the MiFID approach to be the more meaningful one.

We would also like to challenge the ESAs’ statement in the Final Report (JC 2020 66) that “slippage is a more accurate representation than bid-ask spread”.

The fact that the final rules introduce exemptions to the use of slippage would contradict this statement. Namely, the final rules will allow use of the spread approach for over-the-counter transactions and if the number and volume of transactions is so low that aggregation does not eliminate the effects of market movement. We note that no concrete definition is given as to how low “very low” actually is.

This is a considerable step forward and will improve transaction cost disclosure for many funds. But the slippage issue remains for other funds. According to the ESAs, the solution is to “floor” the total (sum of explicit and implicit) transaction costs at a minimum of (the always positive) explicit transaction costs.

We are very strongly against such an approach. A floor being proposed at all proves that something is wrong. Negative costs are a symptom but not the disease: they just indicate the flaw in the methodology which can also artificially inflate positive costs. So the problem with the floor is that it hides the issue under the carpet rather than treating it head on.

Another consequence of this floor concerns the anti-dilution benefit. Anti-dilution is a mechanism to manage transaction costs caused by people buying and selling fund units and it is expressed as a negative transaction cost because it is a benefit for the fund and the investors in it. The new PRIIPs rules say that this benefit will only be taken into account to the extent that it “does not take the total transaction costs below explicit transaction costs”. So if clients benefit from it, they will never know they do. We do not consider such an approach to be conducive to cost transparency for investors, and clashes with other requirements which require us to communicate in a way which is “clear, fair and not misleading”.

We have written extensively on the topic of transaction costs and would invite the ESAs to consider this research as part of the evidence provided (see <https://www.schroders.com/en/lu/private-investor/fund-centre/gfc/fund/search/filter/type=fund,broad-asset-class=all,collection=all/>).

3.11 Other issues

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

From the number of consultations, revisions of Level 2 and discussions on delaying alignment between UCITS KIID and PRIIPs KID since 2014 it has become clear that the KID is irreparable within the current constraints set by Level 1. We applaud the tenacity of the European Supervisory Authorities to continue engaging in this issue, not the least shown by this very questionnaire, but we believe it’s time to start a new chapter on client communication. In our view, this requires starting afresh at Level 1, putting the investor’s point of view at the center with a strong focus on the opportunities digital communication allow.

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