

# Call for evidence on the European Commission mandate regarding the PRIIPs Regulation

Fields marked with \* are mandatory.

## 1. General Information

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\* Please indicate the desired disclosure level of the comments you are submitting:

- Confidential  
 Public

\* Stakeholder

Spanish 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

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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.**

Currently waiting for the approval of the set of amendments to the PRIIPs RTS proposed by the ESAs. Those amendments would enter into force one year later, at the beginning of 2023. This CFA is aimed at proposing amendments to be taken into account in the review of the PRIIPs Regulation, to be undertaken by the European Commission during 2022.

We would like to underline the need of regulatory stability and adequate implementation timelines for amendments to the KID, as well as of consistency among the regulatory regimes of MiFID2 and PRIIPs. Few NCAs have opted for the possibility to request the delivery of the KID before a PRIIPS is marketed: No consolidated database including NCAs requesting this delivery, creates legal uncertainty and imposes the need to check NCA by NCA. The process is burdensome, costly and time consuming, and clearly goes against the idea single market; Instructions to deliver the KID are different among NCAs, even from an operational point of view; It is not clarified if it is the distributor or the manufacturer the party responsible for delivery, creating legal uncertainty and disputes.

As a few NCAs have developed this obligation, it seems is not such a useful tool for supervision and restrictions it creates are not proportional. It should be noticed that KIDs are also available on the manufacturer's website. If this requirement is not removed, some adjustments need to be made in order to ensure legal certainty and avoid unnecessary burdens and costs: A public and updated database; unified criteria to harmonize the information, formats and process to deliver the KID to the NCA; specify in the PRIIPs Regulation that, in those countries where the obligation is triggered, the entity responsible for complying with it would be the distributor, as only this entity would now if the product is being marketed in a certain jurisdiction.

Language of the KIDs: There is no centralized database including the languages accepted in every Member State, creating legal uncertainty and barriers to cross border distribution. NCAs should be able to decide that the KIDs can be drafted in another language (for example, English): languages approved by each NCA should be publicly available in a centralized way in order to allow a clear picture of local requirements; English should be allowed if the rest of the documentation of the product is permitted to be prepared and distributed in English. This would allow retail investors to include in their choice the products of more manufacturers

Implementation costs: constant changes in the content of the KID due to review of Level 1, Level 2, Q&A, Frequently Asked Questions and each NCA instructions generate high costs of development in terms of IT adaptations and the need of hiring consultants. Every potential change including new obligations or relevant changes should be carefully assessed and only applied if they tend to reduce complexity and with a prior cost-benefit analysis.

Instructions given by NCA in its supervisory role: Comparability is not achieved when NCAs give different instructions and even more difficult if those criteria are given by NCAs only to some national firms during bilateral inspections. All interpretative criteria about the content of the KID, scope, criteria to review ... should be provided by European authorities and not Member States. If there is no consensus enough to disseminate uniform criteria at a European level, then, the interpretation about how to comply should be left to manufacturers without local intervention.

Products that include ESG factors in the return: The Regulation does not cover the calculation of performance scenarios where the payout is linked to an ESG KPI. As of today, the industry does not have a solution for such situation and, as a result, these products are limited to professional clients. Regulation may require 2 KIDs (one when the KPIs are achieved and another one in the opposite case), or only one with the worst case scenario. This problem should be addressed as soon as possible.

Publication of the KID in the website of the manufacturer: This requirement has not been further developed and industry has taken different approaches. Some manufacturers (i) include the full list of links to KIDs in a website, (ii) others include a searching tool and some others (iii) only allow to read the KIDs to clients that have certain information (for example the ISIN) or (iv) that enter into the private website using clients' passwords. Considering that one of the main objectives of PRIIPs is comparability and that the use of the KID during the selling process may be useful for retail client, only open access websites should be allowed to store the KIDs. Closed models (as examples (iii) and (iv) above) should not be permitted.

KID delivery: when a retail investor enters several times into the same type of transaction it seems unnecessary to receive the same information each time

## 3. Call for evidence

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### 3.1 General survey on the use of the KID

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#### Extract from the call for advice

*A general survey on the use of the PRIIPs KID across the Union, including, to the extent feasible, evidence on:*

- *The number and type of products and their market share for which PRIIPs KIDs are produced and distributed.*
- *The recent developments and trends on the market for PRIIPs and other retail investment products.*
- *The extent to which PRIIPs KIDs are used by product distributors and financial advisors to choose the products they offer to their clients.*

- *To the extent feasible, the extent to which marketing information aligns with or differs from the information in the PRIIPs KIDs.*

In terms of this general survey, it can be relevant to clarify that regarding the third bullet point in the mandate above, the ESAs understand that evidence is sought on the extent to which the information in the KID is used by persons advising on, or selling, PRIIPs separate from the obligation to provide the KID to the retail investor. This might include, for example, identifying if a product is suitable for the retail investor. For this topic, the ESAs would like to ask for feedback to the following questions:

**2. Do you have, or are you aware of the existence of, data on the number, type and market share of different types of PRIIPs? If you have such data, would you be in a position to share it with the ESAs?**

No comment.

**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?**

Regulation is conceived to enable retail investors to understand and compare the key features and risks of the products designed for them. Regulation has thus empowered investors to perform themselves their own comparisons based on the different KIDs obtained from the relevant manufacturers and distributors.

- o Although the KIDs drafted by different manufacturers or distributors follow the same document format, this does not mean that they are fully comparable, in particular when narratives are prescribed and have only slight differences.
- o While standardization can serve to homogenize and compare products, for products that do not have the same nature and financial characteristics it could become counterproductive, losing sight of the objective that the product can be explained in a simple way according to its characteristics and original nature.
- o We believe the KID does not fulfill well the objective of comparability of investment products, since there are no equal products. In addition, the differences between manufacturers must be taken into account.

Regarding comparison of investment products, the obligation to provide a KID to the retail investor does not imply any obligation on manufacturers to help with such comparison providing it in the KID document itself. Such comparison would require dedication of valuable resources to the research and identification of comparable products issued by third parties, unduly increasing the costs to be borne by the manufacturer. This is not what was meant by the legislation, aimed at providing sufficient tools to the retail investor in order to understand and compare, an objective that we believe the PRIIPS Regulation has fulfilled.

**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?**

Where the comparison is done regarding investment products which have a harmonized pre-contractual document (as the UCITs or the PRIIPs KID), the KID may help. In case of other products, like shares, the pre-contractual documentation depends on each distributor, however the content of the information is defined in the Commission Delegated Regulation (EU) 2017/565, so it should be comparable.

The implementation of MIFID/MIFIR has meant more information for investors, as it implies an increase in pre-contractual, contractual and post-contractual information. Investors have more information, what may be positive in terms of understanding and comparing among products.

Unfortunately, new legislation is being drafted without taking a holistic, complete view of the disclosure information needs of retail customers. An increase in the amount of information may lead to information fatigue of customers, having the opposite effect to that pursued by the regulation

The key investor information document (KID) was born with the objective of being the only simple and clear pre-contractual document to be provided prior to the investment. It is no longer that way, since the application of new regulations and national supervisory criteria have increased the obligations on that regard, translating into new pieces of data that must be provided without bringing further clarity or better information. This makes the subscription processes really burdensome both for the entity and the customer. The provision of the PRIIPS KID is a regulatory obligation for entities, so delivering it to clients is not an option. However, when clients compare between different products (subject to different regulations), it becomes clear that the PRIIPS KID is a particularly difficult document to understand (compared to pre-contractual information provided in other regulations). Therefore, in situations where clients have to decide to invest among several products, they tend to choose those that do not require the provision of a KID

**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?**

We believe that the existing pre-contractual disclosure documents (including cases where no Key Information Document is provided), enables adequate understanding. Investment decisions must be based on investor expectations, risk aversion, customer needs and experience, among other aspects. Pre-contractual information should serve to strengthen knowledge about the products, risks and financial characteristics. Making it simpler would help not only to make better decisions, but better informed decisions.

Before the KID, customers already had other information with the same objective as the KID. The KID has an extension limit that obliges manufacturers to include only certain pieces of information. In addition, the contents of the KID provide information that is very technical and the client might not understand it well.

In general terms, more information should improve investors' knowledge of products. But excessive information can produce a fatigue effect and may cause that some sections of the documents be misunderstood or not provide added value to the investor.

**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?**

The PRIIPS KID has provided more information to the customer, as it was designed with this objective, but we believe that customers were already able to choose the investment product without having a PRIIP, on the basis of other pre-trade documentation.

The PRIIPs rules for KID should be more flexible to allow the calibration between the mandatory information to be provided (the minimum level of protection, for example, whether the product has a guarantee or guarantor, and who is the guarantor) and the possibility of providing further information upon investor

request - considering specific risks and complexity levels of the financial instrument sold and the nature of the investment service provided. A table could be included, instead of elaborating more on the wording.

## 3.2 General survey on the operation of the comprehension alert

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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?**

The different regulatory standards (at the national level) often require the incorporation of a comprehension alert when complex products are marketed. In this sense and given that in Spain most of products are considered complex, due to one regulation or another, the vast majority already include this alert. This leads to retail clients not using the comprehension alert as a useful criterion when making their investment decisions.

There should be more clarity about when to consider a product as complex, as there is currently no differentiation possible between products with a derivative embedded in this aspect disregarding if they are easy or difficult to understand, at least in the local market.

### **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?**

No comment

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

We are not aware of exactly whether or how retail investors take the comprehension alert into account but, by the time that a retail investor views the comprehension alert, he or she would likely have already received sufficient information to have a meaningful understanding of the product and the risks involved. As it is currently defined, the comprehension alert is not very useful to retail investors. When they have to compare between KIDs for products that contain it, they also ask about other pieces of information on the characteristics of the product in the KID. Therefore, at that point, we believe that the retail investor would be more focused on the substantive information in the KID, as well as other relevant information about the issuer and product, as related risks.

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

No comment.

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

In our view, the application of the comprehension alert is overly broad and provides little protection or additional information to potential investors. For example, the language makes sole reference to the notion of “complex products” under MiFID, which means that many products that are not necessarily relevant will be caught.

These products include every structured security or deposit (even the most simple products such as principal protected notes which have been in the market for many years and whose payout mechanisms are generally well understood.) In addition, most retail alternative investment funds will carry this alert. The rather large number of products that would cover this alert may negatively affect its meaningfulness and utility for investors.

Also, by the time an investor sees the comprehension alert, he or she would, presumably, have already received sufficient information to have a meaningful understanding of the product and the risks involved.

Therefore, we do not believe that the comprehension alert really adds much to the understanding or protection of investors, and therefore would be happy to discuss further how it might be revised to reflect some of the issues raised above.

## 3.3 Survey on the practical application of the rules

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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 total costs of the product to comply with the regulatory requirements of the PRIIPs regulation are very high, since, due to the lack of time to implement the necessary developments and the technical complexity of the KID, it has been necessary to contract external suppliers.  
In addition, the cost of internal technological development to comply with all the requirements has been also very high.

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

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

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

The ability of different NCA to interpret and determine the scope of PRIIPs Regulation has caused uncertainty and inconsistencies and has also restricted the availability of certain products to retail investors. As an example, permitted optionality with respect to the requirement (if requested) to notify the NCA in advance about a PRIIPs KID that is being marketed in such jurisdiction has created, and will likely create in the future, inconsistencies in the way that the PRIIPs Regulation is implemented and has in some cases restricted the availability of certain products to retail investors.

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

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

These requirements may have negative implications for both PRIIPS manufacturers in the jurisdiction that imposes such requirements, and on foreign manufacturers that take such requirements into account when deciding where and how to offer a PRIIPS product. Therefore, for the reasons above, we believe that the rules granting optionality to each Member State should be re-assessed in the context of the upcoming review of the PRIIPS Regulation to provide flexibility for manufacturers to choose whether or not to notify the competent authority of their KID. This could potentially decrease the supervisory burden on competent

authorities, while also making the entire process more efficient, less costly and less time-consuming. Any such re-assessment would also be consistent with the goal of promoting more uniform implementation of the PRIIPs regulatory framework within each EU Member State.

If the rule changes under the amended EU RTS will mean divergence between EU and UK KID requirements resulting in some manufacturers having to produce two sets of KIDs. In addition to the actual changes required to the KIDs, firms will need to bifurcate the delivery logic for the two different types of retail clients (i.e. UK and EU). The overlapping timeframes will create additional time pressures.

Regarding main areas of inconsistency between NCAs, additionally to the requirement to send the KIDs before a product is sold in a country, are instructions given to include specific wordings such as

- Inclusion of the bail in risk.
- Instruction in relation of drafting the “objectives” section in a certain way (avoid including defined terms)
- Criteria of what the “fair value” of a product is (each product has only mid price, not bid and ask)
- Instruction in order to inform about early redemption by the client even if the product does not have an early termination right
- Performance scenario: if there is a worse scenario “near” the one calculated, the worst one has to be shown (it is worse because there is for example a barrier that it is activated). Even if the Regulation and the Delegated Regulation are clear enough about the percentile that has to be taken into account. IT tools are not able to recognise such a subjective term.
- How to complain: add the different instances apart from Client Support teams that the client can contact, including the relevant supervisory authority to whom the client can deliver its claim.

Lastly is important to underline uncertainties surrounding the actual application of PRIIPS to certain UCITS. Our experience concerning the UCITS KIID is that it has been applied quite differently between manufacturers and Member States. In some of them, the UCITS KIID is subject to prior supervision by the relevant national authority while in some others it is strictly subject to the manufacturer’s responsibility. There are important differences between ones and the others in terms of wording,

In Spain, the UCITS KIID is an excerpt of the full prospectus, subject to the prior approval of the NCA. This ensures consistency among all legal documents and provides greater certainty to shareholders and unitholders while, on the other hand, it reduces flexibility in terms of production to the fund managers, which are left less room for simplification. In other countries, there is no such prior supervision by the NCA, which only exercises on a case-by-case supervision.

## 3.4 Use of digital media

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### Extract from the call for advice

*An assessment of the extent to which the PRIIPs Regulation is adapted to digital media. This survey shall include an evidence-based assessment of:*

- *To the extent feasible, the actual use of various types of physical and digital media for delivering or displaying the PRIIPs KID to retail investors.*
- *To the extent feasible, the preferred digital or physical media for retail investors to access and read PRIIPs KIDs, and the appropriateness of the PRIIPs Regulation for allowing access to and readability of PRIIPs KID on such platforms.*
- *The appropriateness of the approach taken in the PEPP Regulation 2019/1238 for displaying the PEPP KID on digital media for the PRIIPs KID.*

Article 14 of the PRIIPs Regulation lays down rules regarding the types of media that can be used to provide the KID to the retail investor. It is specified that the use of paper format should be the default option where a PRIIP is offered on a face-to-face basis, but that it is also possible to provide the KID using a durable medium other than paper or by means of a website, if certain conditions are met. These conditions include, for example, that the retail investor has been given the choice between paper and the use of another durable medium or website.

The PEPP Regulation[1] provides rules regarding the distribution of the PEPP KID either electronically or via another durable medium in Article 24. For the PEPP KID, electronic distribution can be seen as the “default” approach, but customers need to be informed about their right to request a copy on another durable medium, including paper, free of charge.

For PEPP KIDs provided in electronic format, the PEPP Regulation also allows for the layering of information (Article 28(4)). This means that detailed parts of the information can be presented through pop-ups or through links to accompanying layers. In general terms, layering allows the structure of the information to be presented in different layers of relevance: for example from the information “at a glance” that is essential for all audiences, to more detailed information being readily available in a subsequent layer for those interested, and so forth.

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

[1] REGULATION (EU) 2019/1238 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1)

**14. Do you have or are you aware of the existence of data on the use of different media? If you have such data, would you be in a position to share it with the ESAs?**

No comment.

**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?**

Following the initiatives on environmental responsibility, we consider that it would be a good time to introduce measures intended to reduce paper consumption. Thus, for most clients, email or other durable mediums are the primary medium for regular communication in line with the sustainability objectives of the European Union.

In addition:

- The reduction of paper-based information would result in cost-savings for investment firms.
- It would grant access to information even in extraordinary situations (such as the coronavirus pandemic).
- It would align PRIIPs and MIFID 2 (after MIFID Quick Fix), something really important as most of the products subject to PRIIPs are financial instruments and therefore, the information to be provided to clients under MIFID 2 is delivered electronically.
- It is important that local supervisors admit that proof of delivery can be provided in this way.

We propose therefore that specific consent for the delivery of the information in a durable medium other than

paper should not be a requirement. This is already contemplated by MiFID Quick Fix and all information obligations should be aligned thereto. In this regard, the EC should continue working on the phase-out paper based information and the promotion of electronic communications/channels as the preferred option and review those regulations that still establish paper as a default option.

To summarize, we believe paper should not be the default option and provided only upon specific request by clients when the client has provided the email to the entity for the communications purposes. This option would be compatible with the current digital breach and would not discriminate against clients without access to digital platforms

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

As sated in Q15, following the initiatives on environmental responsibility, we consider that it would be a good time to introduce measures intended to reduce paper consumption. Thus, for most clients, email or other durable mediums are the primary medium for regular communication in line with the sustainability objectives of the European Union.

We expect that most documents will be distributed in electronic format. However, retaining the ability to provide documents in paper format if a client so requests will be important to ensure appropriate client information, for example for those who do not have access to electronic devices. In order to achieve this goal, we would recommend that the Commission consider amending Article 14 of the PRIIPs Regulation so as to make the electronic format the default option for providing a KID – whilst also maintaining retail clients' ability to opt to receive a KID on paper format, if they so desire.

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

Overall, the distributing entities prefer to display and provide the KID in a way different from the paper format. The delivery of the document via electronic means comes with less cost, better delivery and improved tracking, so as to ensure that the KID has been distributed in accordance with regulatory requirements.

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

As already mentioned, Spanish Banking Association believes that Article 14 of the PRIIPs Regulation should be amended to eliminate the possibility of delivering the KID document on paper, which is the default option where the PRIIP is offered on a face-to-face basis (14.2.a).

Considering the current state of technology, the default option should be the electronic format regardless of the distribution channel that is being used, as established by other European Directives and Regulations, such as MiFID II.

Paper should be kept only for those cases where the investor requests it specifically.

We believe it is very important to ensure that there are no conflicts or misalignment in the regulatory framework concerning how to make available the information to customers and how to provide legal evidence that those requirements have been fulfilled.

Access from different media to digital channels based on standardization of information should facilitate the adaptation of documents, reducing implementation costs.

The use of hyperlinks may be a solution for providing information with third-party documents that are not contained in local databases and can be made available to the customer.

### 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 agree that retail investors should be made more easily aware of the essential information of the investment product and of any other detailed information available. We believe that standardized rules should be drafted at European level regarding the “essential information” and the controls to be applied to ensure that investors have reviewed the documents - including, for instance, ensuring the opening of documents, and establishing read and understand ticks, etc.

The most important thing for the customer is to know the objectives of the product and how it works in due detail.

It also has to know the risks it takes and understand them in order to make an informed decision, considering the nature of the product and the inherent risks.

Customers should also be informed about aspects related to the guarantee of capital or insured returns, and the possibility of undoing the deal. These are aspects that could be included in the characteristics of the product.

In addition, information on the costs of the product is essential. Although providing information about costs is relevant, in certain cases it could be appropriate to allow retail customers to opt-out unilaterally. For instance, in the case of FX activity, which requires great immediacy and customers usually have a recurrent activity and, therefore, they may not be willing to wait to receive the information.

Concerning profitability, past returns do not ensure future returns, and market expectations are generally known not to be always met. Any information about scenarios should be used in order to explain the product. Including any other past performance or forward looking scenarios is misleading and this situation has been exposed during the COVID-19 crisis, as the performance scenarios in the KIDs showed over optimistic projections.

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

## 3.5 Scope of the PRIIPs Regulation

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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.**

No, Regulations related to pension products establish the obligation for manufacturers to produce a specific document, sufficiently clear, transparent and understandable for investors. AEB believes that the document provides sufficient information so as to ensure that investors can understand the reach and scope of the product.

Considering the specific features and characteristics of some of these products, the PRIIPs Regulation is not the best legislative mechanism to ensure appropriate information disclosures.

- Securities and other non-packaged investment products are beyond the scope of the PRIIPs Regulation
- Pension funds should not be considered as a simple investment product. More than that, it is a provision product which aims to accumulate savings for retirement. It cannot simply be compared to other products such as investment funds or investment insurance products, manufactured for pure investment purposes and with a much shorter investment term (normally between 3 and 5 years).
  - o On top of that, we cannot forget that many pension funds are not really offered to retail clients, but part of their employer commitments to contribute to their retirement savings. These pension funds constitute the most important part of them and are defined by the relevant company for their employees in conjunction with the management company of their choice. There is no offering to retail investors, hence, nor ability to compare with other products and ultimately decide by the relevant retail investor.
- We believe that the same logic applies not to include under the PRIIPS Regulation 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 summary, the use of KIDS should not be expanded beyond the current product scope and that current disclosures are adequate in terms of breadth of information provided. The PRIIPs Regulation was

conceived with certain product types in mind. The scope of the Regulation should continue to be limited to these product types as a KID is inappropriate for other product types for which the Regulation was not designed. We believe that the KID, as it is designed as of today pursuant to the rules currently in force, already addresses this requirement, since it is an extra document only due for packaged (i.e. complex) products.

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

In our view, the PRIIPs Regulation should not apply to FX Forwards, floating rate notes or to OTC derivatives:

a. Certain OTC derivative products that are sold for hedging purposes should not be considered as covered under the PRIIPs Regulation scope as the data that they include do not fit with this purpose and does not help the client to better understand or compare. The PRIIPs Regulation includes many references to “investment” products to determine its scope and most of the fields to be fulfilled only work properly for investment products itself, not for hedging instruments. Consequently, investment products concluded for hedging purposes should be explicitly excluded.

In the past, the argument to include these products within the scope of the Regulation besides the continuous references to “investment product” along the Regulation was that the firm may not know if the product will be used for hedging or investment. Although this may be the case in certain circumstances, there are other cases in which the firm has certainty about the hedging purpose of the product. That is the case, for instance, in project finance deals or when the entity provides investment advice to the client and consequently knows the objectives of the client. At least in these two cases, derivatives concluded for hedging purposes should be excluded.

b. FX Forwards. The FX market is the world’s largest financial market and forms the basis of the global payments system. The term FX forward means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange. This is a globally established definition of a FX forward. FX spot transactions generally settle within 2 days of the trade date. A FX forward has exactly the same financial characteristics as a FX spot trade but will generally settle greater than 2 days from trade date.

In this respect, FX forwards share the same financial certainty as an FX spot or a deposit, in that there is no fluctuation in the notional amount exchanged on the Settlement Date versus that agreed upon the Trade Date.

We note that some regulators, for example the FCA, have previously indicated that it views the scope of PRIIPs as including derivatives if offered to retail investors, and that this includes FX forwards<sup>3</sup>. While it may be the case that FX forwards meet the definition of derivatives for the purposes of some regulatory requirements (for instance under MiFID), in our view this should not automatically mean that they are deemed either to meet the definition of a PRIIP, or considered suitable products for application of the PRIIPs regime. By construction, FX forwards do not meet the definition of a PRIIP, as the amount repayable to the retail investor is known at the outset and not subject to fluctuations.

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

Key information that the KID has been designed to address for investors, such as potential returns,

recommended holding times and early redemption, are not deemed relevant for FX forwards. We do not believe that FX forward KIDs provide any additional useful information to investors, especially noting that which is made readily available through other means, including trade confirmations and readily available market data. In our view the extension of the current PRIIPs requirements to FX forwards provides no additional meaningful investor protection and expect that further analysis would result in a negative cost-benefit across providers and users.

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

AEB believes that UCITS and FIA products should not be brought within the scope of the PRIIPs Regulation, given that manufacturers are already required to produce a KID under UCITS and AIFMD Regulations. This document is clear, simple and transparent, and provides sufficient information to enable investors to make solid investment decisions.

However, considering the wide definition of the products that are under the scope, the Regulation should be more precise and clearly establish which products need to have a KID when they are sold to retail clients. According to the information we have as of today, the FCA in the UK intends to amend UK PRIIPS in order to define the scope of the Regulation, and, from our point of view, the same approach should be taken for EU, including the possibility for the EC or ESMA to complete the list from time to time if new products are distributed in the market.

**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?**

The NCAs and the ESAs already have sufficient information about the products that are sold in the EU and that comply with the terms of the Regulation to be PRIIPS. What entities (both manufacturers and distributors) need is legal certainty to avoid any doubt about which characteristics of a product make it a PRIIP.

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

ESA Supervisory Statement was the answer to the concerns of manufacturers that were avoiding certain bond features so that they were not under the scope of PRIIPS Regulation, as preparing and updating a KID is costly and if not done properly may have important consequences.

Yes, we agree with the terms of the Statement and we consider it should be included in the article about the scope of the Regulation.

**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 some amendments to the PRIIPs Regulation would be necessary in these cases:

Recommended Holding Period: for products that have a certain termination date, this field should not be compulsory.

Product type and objectives: in case of products for hedging purposes, the product has to be explained in a way that does not take into consideration its finality. This supposes that customers do not have proper information about them. KIDs should be only used for PRIIPS that the clients will buy for investment purposes.

There are discrepancies between frameworks regarding cost transparency obligations, that are burdensome to understand by retail investors. Greater transparency in terms of information regarding costs has been provided by the MiFID II/MiFIR framework in the context of complex financial instruments produced and marketed in a standard manner. However, more information may also contribute to confusion of clients. Therefore, while over informative rules increase the distribution costs, they do not necessarily strengthen the level of protection for non-professional investors.

Concerning decumulation, we consider it necessary to take into account decumulation targets. As the KID currently does not consider the decumulation target and does not reflect the guaranteed annuity guarantee, we do not have a KID adapted to this type of product and therefore comparability with other products is not the most appropriate.

**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?**

No, we do not find it necessary

**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?**

There is a taxonomy being applied on derivatives and structured products in many European countries, promoted by national associations of manufacturers and coordinated by Eusipa. Although it could help the investor to improve the comparability between products, this taxonomy is not common in all countries, not being applied at all in Spain. Not sure if something similar exists for Funds or Insurance and Pension products.

We should generally avoid an overly prescriptive taxonomy, particularly since the revised RTS already allows for different methodologies for OTC and structures products. It is also important to keep in mind that one size will not fit all. There would potentially be a large number of potential classes, types and subtypes of products and participants may expose themselves to unnecessary risks and uncertainty in trying to define and characterise all relevant products. We believe that it is better to maintain some level of flexibility and room for interpretation in this complex area.

## 3.6 Differentiation between different types of PRIIPs

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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?**

In our opinion, the problem is that it has been considered as “investments” products that have other purposes. Please see our answer to Q.21.  
Additionally, there are many prescribed wordings in the KID (that manufacturers are not able to modify) that reduce the understanding of the product, and the translation in some cases is not precise.

**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?**

Our suggestion is to use the KID only for real investment products.  
The Q&A has already included some modifications to wordings that are not easy to implement. These clarifications have to be in the Regulation or Delegated Regulation, so legal certainty is provided and they are also translated to other Member State languages.

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

No comment.

### 3.7 Complexity and readability of the KID

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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?**

Taking into account the information that has to be included in a KID, a 3 page KIDs is not enough. Manufacturers need 4 pages in order to have a KID with correct explanations, minimum letter size, spaces, readable formatting, different letter size for headings, etc. This will improve the clarity of the KID. We believe that the information included in the PRIIPs KID is sufficiently understandable and reliable and the amount of information is adequate for the types of products that are intended to be caught by the PRIIP definition. The PRIIPs Regulation was conceived with certain product types in mind. Its scope should continue to be limited to these product types as a KID is inappropriate for other product types for which the Regulation was not designed.

Nevertheless, the PRIIPS KID could be made more understandable, particularly regarding ongoing calculations for costs and charges, which may not be readily understandable for retail investors. In any case, it would also be helpful to ensure that the costs and charges regime under PRIIPS is fully aligned with that under MiFID II.

In addition, certain texts are contradictory to each other, for example: "You may not be able to terminate early" vs "You may have to pay a considerable additional cost to terminate early". there are also certain predefined texts that are difficult to understand for customers. They could be drafted in a way easier to understand

Translations to the different languages should be revised, as in some cases quality of the language used for local texts is poor, or flexibility granted to adapt the language for readability.

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

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

Please see our answer to Q.31 above..

In addition, our understanding is that some alternatives already allowed to specific products may be extended to similar instruments. This is the case of the performance scenarios table: the ETDs can include a chart with the performance, which is a very visual way of presenting the scenarios. There are also other products that have the same characteristics but they are sold OTC. OTC products should be allowed to include the same chart, as it improves comprehension and allows comparability between similar instruments in terms of performance scenarios.

### 3.8 Performance scenarios and past performance

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

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

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

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

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

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

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

[3] JC 2020 66 (30 June 2020)

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

We don't find adequate including information on past performance in the KID because that this additional information could mislead customers instead of enabling them to better understand the range of possible returns displayed in the future performance scenarios. An excessive amount of information in the KID may cause undue misinterpretations, and given that not all products will include this information, comparison between products would not always be possible.

However, we understand the value it provides and the current use within the UCITs KII documents. Information on past performance should only be included in the KID where it is available and when it provides value to the investors. This means that we consider it should be optional. In our opinion, in some cases the KID would be much more balanced with a better definition of future performance scenarios not taking into account historic data. However, historic information could be interesting in case of UCITs Funds

#### **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?**

Article 8 (3) (d) (iii) refers to "appropriate performance scenarios, and the assumptions made to produce them;"

From our point of view these are technical issues that a retail investor may not understand. Additionally, in order to explain the assumption, manufacturers need to provide a long explanation that may imply that the KID is longer than 3 pages. The KID should focus on information that is understandable and useful to the customer. This type of detailed clarification is not.

Additionally, scenarios could be easily calculated and provide more reasonable results by adding to each asset class or geographic area a drift defined by the ESA's. It could be seen as a measure of risk premium that could be based in long term historic data or any methodology that the ESA's could envisage. It would reduce inconsistencies in the results and would help achieve comparability between products.

These modifications should be implemented as optional for each entity.

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

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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.

Such a requirement would imply a high level of complexity and, in our view, would not greatly contribute to customer understanding.

**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?**

In our opinion, this would add complexity and make it difficult for the customer to understand the product as a whole.

**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?**

In our opinion, we believe that at product launches there is a lack of awareness of which options will be the most popular with customers.

**38. Do you have any other comments on the preferred approach for MOPs and or suggestions for changes to the requirements for MOPs in the PRIIPs Regulation?**

No comment.

### 3.10 Alignment between the information on costs in the PRIIPs KID and other disclosures

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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?**

Currently, due to the way it is calculated (including future flow scenarios) and because all the costs inherent in the insurance are included (both the insurer's own costs and those of third parties, when applicable), the breakdown of costs presented in the KIDs may differ from those indicated in other documents provided to the client. Although it is true that the difference should not be high, it can be confusing for the client.

## 3.11 Other issues

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

Please see our answer to Q.1.

### **Contact**

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