

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

Association of the Luxembourg Fund Industry (ALFI)

* Sector

- Investment management
 Insurance
 Banking (structured products/ derivative products)
 Other

If other, please specify:

Trade association for fund and asset management

* 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.

From the outset, ALFI has been commenting on any draft texts or consultations concerning the PRIIPs Regulation and its implementing rules at level 2 or 3. Two of our key messages were and still are to require a level playing field as regards product disclosures for investment products, and to rely on feedback gathered from investors in the context of consumer testing.

Moreover, we regret that the PRIIPs level 1 regulation was not reviewed at the same time as the corresponding level 2 regulation, as both are interconnected in a way that certain changes at level 2 were not possible because of an existing rule at level 1 (e.g. with respect to the presentation of performance).

For other general aspects, please also refer to our answer to question 40.

Please note that a pdf version of our full response is available on our website (<https://www.alfi.lu/en-gb/news/category/statementsandpositionpapers/1>).

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 invite the ESA's to visit the section on statistics available on ALFI's website. While ALFI publishes figures for Luxembourg investment funds, statistics concerning Europe or the world are collected by EFAMA. The pdf version of our response includes links to publicly available statistics (<https://www.alfi.lu/en-gb/news/category/statementsandpositionpapers/1>).

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?

We are not in a position at this stage to provide any information on this, because our members are fund manufacturers, not product distributors or financial advisers. Information is provided in particular to insurance companies by the European PRIIPs Template (EPT). This may change in the future when the PRIIPs KID is produced for any kind of products.

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

We refer to our answer to question 3.

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?

Both the PRIIPs KID and the UCITS KIID are pre-contractual documents which have to be handed over to investors before an investment decision is taken. The fund manufacturer makes sure that the PRIIPs KID and /or UCITS KIID, depending on the type of fund, is provided to the distributor, who gives it to retail investors. We are not in a position to assess the general use of it by the retail investor, or in comparison to marketing material.

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?

Generally, we think retail investors may rather rely on other marketing material (like factsheets), as it partly includes more targeted information and less references to the prospectus (e.g. as regards risks and performance presentation). It is worth noting that the recently adopted ESMA guidelines on marketing communications steadily repeat the consistency requirement across disclosure documents.

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?

From a fund perspective, our members report that the alert is shown on the KID when indices are used or in case of structured funds. Generally, we question the necessity of the comprehension alert, as it is largely redundant with the investor profile in the “What is the product?” section that is more specific. Moreover, MiFID rules prevent to sell “complex” products to retail investors with only basic knowledge.

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

We have no confirmed statistics on this, but we assume almost all alternative investment funds will have to include a comprehension alert, given its broad scope.

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

We think the comprehension alert is not really helpful to investors (see our answer to question 7). We are not in a position to assess whether retail investors are able to consider this information in an appropriate way.

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

Given that we represent product manufacturers, we leave it to retail investors and their associations to answer this question.

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

As association representing product manufacturers, we are unable to provide feedback on this. We would assume that financial advisers rather look at the SRI as reliable feature.

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 following different types of costs are typically incurred by fund managers to comply with the PRIIPs Regulation:

- Costs for the production of the KID, in-house or outsourced (including costs for people overhead);
- Expenditure for translations;
- Expenditure for data collection;
- Expenditure for calculation;
- Expenditure for third party data (transaction costs, risk, tick data/benchmark data, look through in case of target funds/fund of funds);
- Expenditure for adapting systems and processes;
- Costs for the filing and provision of the KID to investors (including furnishing of websites etc.)
- Costs needed to produce collateral outputs (EPT, CEPT, past performance document, previous performance scenarios calculations).

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 are unable to provide an estimate of the average costs. The costs are usually twofold:

- Costs to enable PRIIP MOP manufacturers to produce PRIIPs compliant data and make these available by the fund manufacturer
- Costs to produce an actual PRIIP KID for the fund.

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?

Costs depend very much on the type of the product/fund, which is why it is difficult to provide concrete figures. Total costs are mainly based on the costs for the production, calculation and distribution of the KID. Transaction costs are relatively high compared to other components.

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 main area of inconsistency is in our view the calculation of transaction costs, because it can be based on different aspects.

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?

We think that physical (printed) papers are used to a much lesser extent than electronic versions.

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?

Electronic versions (notably PDF documents) are mainly used, and paper versions can be handed over upon request. We are not aware of any issues from a retail investor perspective.

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

Given that we represent product manufacturers, we leave it to retail investors and their associations to answer this question.

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

Electronic versions (PDF documents) are the preferred medium.

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

We think the use of electronic PDF documents is appropriate. To avoid the risk that information is overlooked by the investor, we think it is important to wrap the information in a durable document. Moreover, this document should include the production date to clearly show whether the information is still valid or outdated.

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 think that practitioners are not ready for a layering approach. Moreover, we think there is a higher risk that (hidden) aspects are not properly updated. We are also unsure about the handling of printing requests in case pop-ups are applied.

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.

In line with the regulation's name ('packaged retail and insurance-based investment products' regulation), we think only wrapped products should be in scope, i.e. securities should remain out of the scope. On the other hand, we are clearly in favour of a level playing field as regards disclosure requirements for packaged investment products. Investors should be able to compare the different investment options and product manufacturer should be subject to comparable requirements. As regards pension products, the PEPP KID or a similar pension KID taking into account the specific features of these investment products should be provided to investors. As a result, the scope of the PRIIPs Regulation could then remain unchanged.

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

We refer to our answer to question 20.

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.

There is a common understanding in the fund industry about the products that are in scope of the PRIIPs Regulation. Therefore, we do not see a need for clarification.

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?

We think that packaged or wrapped products that provide an indirect exposure to assets or reference values are already captured by the PRIIPs Regulation. Generally, definitions should to be taken from sector-specific legislation before introducing new concepts.

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

Apart from what we mentioned in our answer to question 20, we have no further comments on unwrapped products like bonds.

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

[1] For example an annuity.

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

We would highly recommend to provide further guidance with regard to the scope of the PRIIPs Regulation and target investors. All retail investors should get a KID, while there should not be a requirement to hand over a KID to institutional investors.

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 think that further clarification is needed.

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?

Generally, legal definitions or even full taxonomies can be helpful provided they are clear and unambiguous (do not leave room for interpretation). With regard to the PRIIPs Regulation, we think its scope is clear, so no further definition of terms is needed.

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?

It has been a steady request from the fund industry to show (only) past performance in the KID for linear products like investment funds. We welcome that information on past performance will in the future be available via a link in the KID, but we have clear doubts whether retail investors will really access this important information. Therefore, it would be crucial to include it in the KID itself. Given that the calculations used to show future performance scenarios have been improved, the latter could be shown also in case of linear products, but considering remaining uncertainties in terms of predictions it would be preferable to adapt the wording by using e.g. the terms ‘illustrative future scenarios’, and to include a disclaimer stating that both sets of information are based on the same set of data.

It is difficult for retail investors to understand information disclosed for short-term products with a short recommended holding period (RHP) and that shown for long-term products with a long RHP. It would be better to offer specified narratives linked to the respective RHP.

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?

We refer to our answer to question 28. Moreover, the development of broad product groupings or buckets of similar products would allow manufacturers to disclose the most relevant information for different buckets.

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

For investment funds, we refer to our answers to questions 28/29. The need for different disclosures in costs and performance indicators is a way to bucket investment products.

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?

It has been a steady request from the fund industry to show (only) past performance in the KID for linear products like investment funds. We welcome that information on past performance will in the future be available via a link in the KID, but we have clear doubts whether retail investors will really access this important information. Therefore, it would be crucial to include it in the KID itself. Given that the calculations used to show future performance scenarios have been improved, the latter could be shown also in case of linear products, but considering remaining uncertainties in terms of predictions it would be preferable to adapt the wording by using e.g. the terms ‘illustrative future scenarios’, and to include a disclaimer stating that both sets of information are based on the same set of data.

In addition, we believe a risk disclosure consisting only of the SRI, its disclaimer text and a reference to the prospectus does not allow for an adequate description of a product’s risks. We recommend to increase the narrative space available in order to allow for the main risks to be briefly described, at the very least be named.

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

With regard to the overall presentation, we think that the PRIIPs KID guidelines are reasonable and do not include major design flaws. We would strongly recommend not to use icons or dashboards that will not only burden the layout, but that will also likely create confusion among readers. The document is short and its section headers are clear enough for not adding “bells and whistles”.

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?

It has been a steady request from the fund industry to show (only) past performance in the KID for linear products like investment funds. We welcome that information on past performance will in the future be available via a link in the KID, but we have clear doubts whether retail investors will really access this important information. Therefore, it would be crucial to include it in the KID itself. Given that the calculations used to show future performance scenarios have been improved, the latter could be shown also in case of linear products, but considering remaining uncertainties in terms of predictions it would be preferable to adapt the wording by using e.g. the terms 'illustrative future scenarios', and to include a disclaimer stating that both sets of information are based on the same set of data.

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 refer to our answer to question 33.

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.

Requiring a KID for each investment option would increase transparency in terms of the exact investment choice of the investor, because it reflects the particular investment under an insurance product and with that the characteristics of both would be presented in one document. However, from a PRIIP manufacturer’s perspective, this approach would increase the amount of documents to be maintained, and also the efforts to keep them updated (e.g. for 10 insurance products with each having 100 investment options this would imply to manage 1000 documents, whereas under the Article 10b) approach only 110 documents would have to be managed – assuming the same language and the same investment type is used). This high number of documents could cause issues identifying the exact product-investment-option-combination when presenting KIDs on the web and investors searching for the right one.

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?

Displaying a combination of the product costs and investment option costs would de facto result in an Article 10a) approach. Here the challenge lays in the increased number of documents to be maintained, because a KID for one ISIN that is assigned to different products (with different cost structures) needs to be generated two times containing the information for each of the product individually. On the other hand, it will increase transparency, comparability and understanding of costs.

A good approach would be to keep the ranges on the product KID as the result of aggregating the costs from the underlying investment options, and in addition to that, express the costs on the Specific Information Document as a combined number for product and investment (rather than only the investment).

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?

The biggest benefit would be the reduced number of items to be processed (source European PRIIPs Template, calculate performance and costs, produce KID). It would be easier to have a few profiles (e.g. cautious, balanced and dynamic) and assign underlying investment options according to their characteristics to one of the profiles. The degree of details to be provided will decrease, and so will the comparability and transparency. In any case this would require more regulatory guidance to keep the purpose of the PRIIPs Regulation by setting and keeping transparency and comparability on a high level.

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?

In the fund industry, the exchange of information between fund managers and insurance companies is done via the European PRIIPs Template (EPT). It would be helpful if this European standard was applied consistently across jurisdictions, i.e. there should not be any other national templates to be filled in, as it is e.g. the case for Luxembourg insurance products. The Luxembourg Insurance Association (ACA) has notably designed the so called 'Luxembourg PRIIPs Template' (LPT) to collect information on the investment/profiles from discretionary portfolio managers. It should serve as an alternative to the EPT for Dedicated Funds, Internal Collective Funds or Specialised Insurance Funds. However, it causes confusion among asset managers with respect to the proper population of such templates, resulting in partially incomplete or insufficient information.

Furthermore, this may set a signal to other markets to apply as well market-specific practice to exchange information leading to reduced comparability, because the same investment options may be presented differently depending on local requirements. In addition to one common standard of exchanging PRIIPs-related information, it would be good if the recommendations published by the FinDatEx group would be obeyed by all market participants. Some asset managers have been sharing partially populated EPTs instead of providing column headers for optional columns, others have chosen to provide a different column separator than the one defined in the EPT. Non-mandatory recommendations lead to reduced market efficiencies and an increase in overhead of communications and clarifications between EPT distributors and recipients.

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?

We think that the revised Regulatory Technical Standards on PRIIPs addressed certain issues, but still a number of other points should be addressed by a broader review.

For example, numerous inconsistencies still exist between MiFID/IDD and PRIIPs in how product cost information is calculated and presented to investors. MiFID uses a zero-return assumption while the PRIIPs Regulation uses the cost disclosures tied to future performance scenarios. Different cost disclosures are confusing for the investor and create mistrust in financial products.

The overarching MiFID and IDD frameworks should provide the overall cost disclosure points and methodologies, which could then be inserted into the PRIIPs KID.

Moreover, both MiFID and the PRIIPs Regulation require the disclosure of transaction costs. The definition in MiFID (and IDD) explicitly forbids the inclusion of "market movements" as a cost. The PRIIPs RTS, however, have come up with a calculation methodology referred to as "arrival price" (also known as "slippage"), which considers certain market movements as a transaction cost. While the arrival price methodology incorporates certain fundamental flaws that could be rectified only to a certain degree by the revision of the PRIIPs RTS, it is essential to point out again that it can result in misaligned transaction cost disclosures under PRIIPs and MiFID.

Beyond cost information, risk disclosures are also inconsistent. MiFID does not contain a standardised risk measure like the PRIIPs' Summary Risk Indicator (SRI). This being said, it could be used for risk disclosure purposes under MiFID, creating necessary alignment for retail investors.

Moreover, each of the frameworks provides retail investors with a contradicting view on performance. On the one hand, MiFID II (through its delegated acts) requires product manufacturers to provide investors with an explanation on the "functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions". If past performance is shown, it must carry a clear warning to investors highlighting that past performance does not constitute future returns. On the other hand, the current PRIIP KID requires future performance scenarios, in essence transposing past performance into the

future. This situation will be slightly remedied by the revised PRIIPs RTS, which will allow funds to produce product performance scenarios based on historical instead of future scenarios.

3.11 Other issues

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

It is worth noting that the PRIIP level 1 Regulation (notably Article 8(3)(c)(ii)) requires disclosures on specific environmental or social objectives targeted by the product, but – despite Article 8(4) – there is no specification at level 2 on how this should be done. It would be important to have clear guidance by the ESAs /European Commission.

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