

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

Gesamtverband der Deutschen Versicherungswirtschaft e.V.

* Sector

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

* Contact person (name and surname)

* Contact person email

Contact person phone number

2. Introduction

In the September 2020 new Capital Markets Union Action Plan, the European Commission (Commission) announced its intention to publish a strategy for retail investments in Europe in the first half of 2022.

In May 2021, as part of its evidence gathering, the Commission launched a three-month public consultation on a wide array of aspects related to retail investor protection. [1] The Commission is also undertaking an extensive study that was launched in 2020, which involves analysis of the PRIIPs Key Information Document (KID), as well as other disclosure regimes for retail investments. This study will involve extensive consumer testing and mystery shopping, with the aim to ensure that any future changes to the rules will be conceived from the perspective of what is useful and necessary for consumers.

On 27 July 2021, the Commission sent to the JC of the ESAs a request for advice asking the ESAs to assist the Commission in the preparation of legislative proposals implementing aspects of the retail investment strategy, and more specifically regarding a review of Regulation (EU) 1286/2014 on packaged retail and insurance-based investment products (PRIIPs) [2]. The deadline for the ESAs to provide their advice is 30 April 2022.

The Commission invited the ESAs to provide advice on the following main areas:

- A general survey on the use of the KID
- A general survey on the operation of the comprehension alert in the KID
- A survey of the practical application of the rules laid down in the PRIIPs Regulation
- An assessment of the effectiveness of the administrative sanctions, measures, and other enforcement actions for infringements of the PRIIPs Regulation
- An assessment of the extent to which the PRIIPs Regulation is adapted to digital media
- An examination of several questions concerning the scope of the PRIIPs Regulation

For most of the areas set out above, additional more specific elements to be addressed were identified in the mandate; for instance for the general survey on the use of the KID there are four sub-elements, including to provide evidence on the extent to which marketing information aligns with the information in the KID.

Notwithstanding the mandate provided by the Commission, the information collected and analysis conducted by the ESAs since 2018 would indicate that changes to the PRIIPs Regulation are needed in other areas, besides those addressed in the mandate, in order to achieve the optimal outcomes for retail investors. Indeed, the ESAs have previously provided their views on the need for changes to the PRIIPs Regulation in a number of areas. [3] Consequently, this call for evidence requests feedback on a range of other issues, where the ESAs are considering the relevance to additionally provide advice to the Commission.

In parallel with sending the call for advice on the PRIIPs Regulation to the ESAs, the Commission also sent separate calls for advice individually to EIOPA [4] and ESMA [5] regarding other aspects of retail investor protection, as part of the work to develop a retail investment strategy. The ESAs are seeking to coordinate the work undertaken for these different mandates.

The ESAs acknowledge that the importance and complexity of the topics set out in the Commission's request for advice call for a thorough involvement of stakeholders to ensure that they can adequately contribute to the formulation of the advice from the beginning of the process. At the same time, the short timeframe available to prepare this advice, places constraints on the type of consultation and time that can

be given for responses. Taking into account these constraints, as well as the nature of the request from the Commission, which seeks various different types of evidence regarding current market practices, the ESAs have decided to launch a call for evidence. The responses provided will be used to shape the technical advice to the Commission. The ESAs also plan to hold a stakeholder event in Q1 2022 before finalising the advice. Further details about this event and how to register will be available via the relevant sections of the ESAs' websites in due course.

Where questions in this call for evidence ask for respondents' "experiences" regarding a certain issue or topic, **please provide information regarding the basis for the views provided**. This might include whether the views are based on actual experiences, such as selling, advising on, or buying PRIIPs, a survey of market participants, academic research undertaken etc. Manufacturers of products, which currently benefit from an exemption to produce a KID, such as fund managers, are not precluded from sharing evidence or experience under this call, but should clarify the context in which they would provide comments.

[1] EU strategy for retail investors (europa.eu)

[2] Call for advice

[3] See for example the Joint ESA Supervisory Statement – application of scope of the PRIIPs Regulation to bonds (JC 2019 64), or the Final Report following consultation on draft regulatory technical standards to amend the PRIIPs KID (JC 2020 66).

[4] Call for advice to EIOPA regarding certain aspects relating to retail investor protection | Eiopa (europa.eu)

[5] Call for advice to the European Securities and Markets Authority (ESMA) regarding certain aspects relating to retail investor protection (europa.eu)

1. Please provide any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

German insurers play a vital role in providing financial security to customers that aim to either protect their relatives in case of misfortune or themselves from financial difficulties in old age. Currently, the German insurance industry has around 86 million contracts in life, protection, pension/annuity or endowment insurance under operation. In the year 2020 alone, 4.7 million new contracts were concluded. Many of these contracts fall under the scope of the PRIIPs Regulation. Consequently, German insurers look back at almost four years of extensive first-hand experience with the PRIIPs KID.

Overall, we truly support the idea of the PRIIPs KID as it exists now, since it helps consumers to compare different products and receive information about the key features of products. Unlike the PEPP KID which up to now exists only in theory, since no corresponding products are yet on the market, the ESAs draw on a lot of experience with the PRIIPs KID. Therefore, the current Regulation and the RTS should serve as a strong basis for the future PRIIPs KID 2.0.

However, we believe that the review is a good opportunity to modernise the PRIIPs KID.

- Information on insurance features such as investment and biometric protection, different payout possibilities should be in the centre of the IBIP KID since these features are not mere add-ons.

- It should streamline some of the information. For example, intermediate values on performance and costs should be deleted, information on costs could focus stronger on the total annualised costs and the RIY

indicator. Many consumers find it difficult to read extensive tables and interpret them correctly. Therefore, the information should be prioritised appropriately.

- The overall length of the PRIIPs KID should remain constant.
- Past performance should not be included in the PRIIPs KID since it could be misinterpreted by consumers as a predictor for future performance. To improve future performance scenarios, it should be clarified that these should illustrate the uncertainty of PRIIPs outcome and indicate a possible range of performance.
- It should become digital by default and introduce layering of information. However, the benefits of digitisation should not be cancelled out by new layers of additional requirements imposed on manufacturers.

It should be duly considered that a review needs a realistic timeline for implementation and thorough consumer testings on real-life products that are common in the market. Furthermore, the methodologies should be thoroughly consulted with the stakeholders to ensure that they work well for different products. It is of utmost importance that new provisions are also sufficiently robust and uniform so that constant quick fixes of the provisions will be avoided in future.

Finally, individual and occupational pension products, recognised under national law as having the primary purpose of providing the investor with an income in retirement, should remain excluded from the scope of this Regulation. They usually follow specific information documents that are tailored to the specificities of these products. Since they are usually tax incentivised, they have properties that are unique to the Member State they are sold in.

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?

The German insurers do not have such product-specific data.

The majority of German IBIPs are long-term products. They are purchased until retirement and, thus, have RHPs of sometimes 40 years (accumulation phase). In terms of product structure, most of our products are MOPs and so-called hybrid products, which means that consumers invest in the general account and in underlying funds. The assets are often dynamically allocated between two or even three pots. The general account offers consumers a certain level of guarantees, a long-term stable and sustainable investment while the funds consumers choose as an option provide additional investment that is riskier and have possibly a higher yield.

The general account is commonly not an investment option itself but the core element of the IBIP itself. This construction prevalent in the German market should be considered in the MOPs discussion.

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?

As the association of insurers, we represent the manufacturer side. However, we can say that, online sales do not play a significant role in the German market for IBIPs. These products are usually used for old-age provision, a topic that involves existential financial decisions. Here, customers still trust the advice of a human being. GDV statistics show that in Germany for life insurance, 96,7%* of new business premiums are distributed via intermediaries.

* <https://www.en.gdv.de/resource/blob/64190/7471a9a510a5812ab79591ab75049e31/statistical-yearbook-2020---broschuere-data.pdf> (Page 13)

However, from our point of view distributors consider all relevant information, including these from the KID, to advice their clients professionally, honestly, and fairly. This is confirmed by EIOPAs annual report on administrative sanctions under the IDD, which proves that no sanctions on article 17 IDD have been imposed by the supervisory authorities in Germany.

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 have no experience in this respect and can, therefore, not answer.

5. In your experience, e.g. as a retail investor or association representing retail investors, to what extent are KIDs used by distributors or financial advisors to support the investment process? Is marketing material used instead or given greater emphasis?

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

In our experience, there have not been any systemic problems concerning the relationship between the KID and marketing material.

With reference to marketing materials, the IDD article 17(2) requires all information addressed by the insurance distributor to customers or potential customers to be fair, clear and not misleading. The provision specifically includes marketing communications and also states that marketing communications shall always be clearly identifiable as such. These rules have, in our view, worked well in practice.

3.2 General survey on the operation of the comprehension alert

Extract from the call for advice:

A general survey on the operation of the comprehension alert, taking into account any guidance developed by competent authorities in this respect, the survey should gather data on the number and types of products that include a comprehension alert in the PRIIPs KIDs, and to the extent feasible, evidence on whether retail investors and financial advisors consider the comprehension alert in their investment decisions and/or advice.

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

7. What are your experiences regarding the types of products that include a comprehension alert?

As providers of long-term saving products, we have extensive experience regarding the needs and expectations of retail investors. On this basis, it can be said that for the average retail investor, it is difficult to understand the precise mode of operation of any investment product, including those which are deemed non-complex under current IDD and MiFID II rules. Regardless of the product structure, financial decisions are challenging for retail investors: not only different products and concepts existing on the market must be evaluated but also questions of social and tax law. Many retail investors not only lack the basic knowledge of the financial context but also – understandably – the time and desire to acquire it.

Moreover, a simply constructed product is not per se associated with fewer unexpected losses than a sophisticated one. A share, for example, is rather simply constructed product and easy to understand compared to a life insurance policy. However, most consumers do not understand and misjudge the inherent risks in a share.

We, therefore, believe that differentiation based on the simplicity/complexity of the products and labelling in general is not helpful for consumers. Instead, individual advice, coupled with a thorough analysis of the retail investor's particular financial needs and preferences is of utmost importance to ensure that he receives a suitable product.

To illustrate this by example: Retirement policies may have durations of 60 years and more (saving and retirement phase). It is obvious that such products need to be able to adopt to changing life situations. This necessitates various options which are designed to best meet individual needs and expectations of each consumer. IBIPs reflect the long-term demands and need of consumers which are, naturally, complex. IBIPs

merely reflect these needs. Product features of some sophistication do not mean that these products are complex from consumers' perspective. This requires a comprehensive product construction to meet customers' changing expectations. Many might include a certain degree of actuarial complexity to ensure that they match the demands and needs of consumers. From our point of view, it is not justified to describe or disqualify this comprehensiveness as complex, since the complexity arises from the customers' situation not from the product design. The best example are the risk mitigation techniques introduced in PEPP: they can be very sophisticated, but they benefit consumers by reducing the risks of the investment. A plain share in a company may be a simply constructed financial product but is very complex for consumers since it requires some expertise to realistically assess the risk associated with a direct investment.

Another example is a modern mobile phone, that must have many features to be useful for consumers that go far beyond making plain phone calls. This does not mean that a phone that has several cameras, internet and Bluetooth is consumer unfriendly from a viewpoint of its primary function.

Furthermore, it should be noted that the IDD criteria on complex products were taken over from the ESMA guidelines on complex debt instruments and structured deposit that are an unsuitable basis for IBIPs. Therefore, due to the unclear criteria and unclear intention of the legislator, many manufacturers currently include a comprehension alert in the PRIIPs KIDs of their products to avoid legal risks.

Currently, many insurers in Germany use a warning label for (almost) all of their products in order to avoid legal risk. If, despite our described fundamental concerns, warning labels are to be maintained, it would therefore be necessary to have a clear definition of complexity. The current definition and the cautious interpretation prevailing in practice lead to too many products being classified as complex, with the result that the warning becomes less important.

A warning should be reserved for exceptional cases and not become the rule.

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?

See our answer to Q7

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

First and foremost, we are concerned that the comprehension alert may mislead customers. In our experience, most retail investors find it difficult to understand the specific mode of operation of any financial product. Individual advice is, in our view, key to ensure that customers are provided with suitable products. In general, the customers do not need to understand the details of the product construction, but rather the effects, which are usually easy to understand.

Currently there is a lot of unclarity as regards to which products need a comprehension alert. Therefore, many manufacturers chose to include a comprehension alert to ensure legal certainty. For a warning to be effective, it should affect only a minority of products. Labelling a large group of products with any label will lead to this label becoming useless. Since this risk can never be ruled out, we believe, that labels should be abandoned in total.

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

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

We believe that the alert can be an indication for advisors that potentially a higher advisory effort will arise if they recommend a product with a comprehension alert. This hint makes it clear to advisors, that they need to provide the customer with more or deeper information and clear up any misunderstandings.

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.

One crucial cost factor are the changes in the Regulation. Currently new PRIIPs RTS will come into force that include large changes to all areas of the PRIIPs KID. Therefore, the PRIIPs KID will have to be launched anew. At the same time, the ESAs publish new Q&A to the current RTS which must be implemented as well. Therefore, it is of utmost importance that new provisions are sufficiently tested on real-life products and are sufficiently robust and uniform so that constant quick fixes of the provisions will be avoided in future.

The provisions in general must be implemented and integrated into calculation systems and IT systems. The product management needs to program, re-design and test the layout and printing systems. The methods must be integrated into the websites and front-end. The legal department will have to assess and test the overall document, narratives as well as numbers, and different options available to ensure compliance with

the legal requirements. With respect to MOPs, information needs to be communicated with asset managers. The distributors need a training that explains the content.

Furthermore, the PRIIPs KID is firmly integrated in the set of pre-contractual documents that consumers receive. It is important that the PRIIPs KID is consistent with all other information documents. Therefore, any changes of the requirements regarding the KID could result in a cascade of other changes, thus considerably increasing the costs.

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

See 12 a

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

See 12 a

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

We are not able to comment on the supervision in other Member States. Nonetheless, we would like to point out that the insurance-based investment products offered in the different markets vary considerably. It is, therefore, inevitable and to be welcomed, that the supervisory practice is oriented towards the specific characteristics of the products on the respective markets. This, however, does not mean that it is inconsistent across Member States.

3.4 Use of digital media

Extract from the call for advice

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

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

Article 14 of the PRIIPs Regulation lays down rules regarding the types of media that can be used to provide the KID to the retail investor. It is specified that the use of paper format should be the default option

where a PRIIP is offered on a face-to-face basis, but that it is also possible to provide the KID using a durable medium other than paper or by means of a website, if certain conditions are met. These conditions include, for example, that the retail investor has been given the choice between paper and the use of another durable medium or website.

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

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

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

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

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

The German insurance association does not have this data.

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?

From a manufacturer’s point of view, we believe o the transmission format of PRIIPs KID should be modernised. While the PEPP KID is provided electronically per default, the PRIIPs KID has still to be provided per default on paper. This is not in keeping with the times and in the interests of investors. To assess challenges and benefits of the different solutions, authorities and legislators must test them on a wide range of products, consumers, and markets. Stakeholder consultation is also important to integrate real-world experience, provided that full details of the proposed solutions are explained in the consultation paper.

We believe that the preferred media could be as different as the customers themselves. Hence, one single format should not be promoted. In any case, from a manufacturers and distributors point of view it is important that the customer journey can take place without media breaks. Having in mind that the design of distribution and sales processes is a key factor of competition we are convinced that distributors and manufacturers will have a strong own interest to provide solutions which meet the consumers expectations. From that angle any rules or guidelines should be innovation-friendly, technologically neutral and designed flexible enough to be future-proof to be fit for the digital age. Moreover, consumers should not be nudged to take their financial decisions solely based on a product's potential costs or the product design, thus selecting sub-optimal but cheaper or very simple options.

Finally, it should be noted that rules should be uniform for different product types and across Member States to ensure a level playing field.

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

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

See our answer to Q15. There should also be a possibility to print out all the layers of the PRIIPs KID or some of them.

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

Yes, see our answer to Q15.

Finally, too much information kills information. Therefore, the PRIIPs KID should streamline some of the information. For example, intermediate values on performance and costs should be deleted, information on costs could focus stronger on the total annualised costs and the RIY indicator. The section on biometric protection in the PRIIPs KID simply lists lengthy and badly structured figures about the benefits and costs. Same costs are shown in many ways leading to redundancies. The section should be improved, the PEPP KID is a positive example for this.

The overall length of the PRIIPs KID should remain constant. If new information is added, some information must be removed. (one-in-one-out principle).

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?

It should be noted that PEPP KID does not yet exist in practice. Experience and lessons learned are needed how layering will work in practice in the PEPP KID.

As regards layering: This is definitely an interesting approach, and we suggest testing different variants with consumers (V1: main information ("dashboard") on layer 1, remaining information on layer 2; V2: brief information on all items in layer 1, more detailed information on all items in layer 2; mixed forms are also conceivable). But it is important to note that the layered information in digital format should be the same as the information when PRIIPs KID is printed out. Therefore, layering should not be regarded as a carte blanche to add more content to the document. Furthermore, to ensure legal certainty, it is important to clarify which information needs to be included in the first layer and which information could be moved to subsequent layers.

3.5 Scope of the PRIIPs Regulation

Extract from the call for advice:

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

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

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

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

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

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

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

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

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

We believe that the scope of the PRIIPs Regulation with respect to insurance products should remain the same.

Private and occupational pension products recognised under national law follow usually specific information documents that are tailored to the specificities of these products. Since they are usually tax incentivised, they have properties that are unique to the Member State they are sold in. We, therefore, believe that the one-size-fits-all approach of the PRIIPs Regulation would not lead to more transparency about these products. In our view, it is not necessary either, since, due to the special incentives accorded to them, these products and their information documents are under the constant and scrutiny by the NCA. Under German law, the customers of pension products of this type receive, inter alia, a standardised national key information document, which was specifically conceived for this purpose, and which includes information on the features, costs, and potential benefits of the product.

The products mentioned in Article 2(2) point (g) do not exist in the German market.

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?

No

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.

Not relevant for the German insurance 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?

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

Not relevant for the German insurance market.

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

IBIPs are heterogeneous across European markets. The current regulation showed that in practice there were many unexpected challenges with the scope of the PRIIPs Regulation in some European markets. This was because certain relatively rare products were not properly thought of. Therefore, we urge the ESAs to thoroughly consult any changes in the definition of an IBIP with the relevant stakeholders to avoid products being included unintentionally and consumers thus receiving non meaningful information.

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?

On the German market we have not experienced any problems on this point which would require a clarification.

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?

In view of the considerable diversity among products available to retail investors in the different Member States, we believe that a standardised classification would be bound to cause more confusion than transparency. Furthermore, a taxonomy would create additional administrative requirements to comply with.

First, we are concerned that a conclusive taxonomy of PRIIP would cause misleading information where a particular product does not fit into any of the categories. That might especially be the case for new products. A taxonomy might complicate innovation.

Second, clustering would lead to products being less comparable: for example, the approach taken in the new RTS of distinguishing information on costs depending on whether the product is a PRIIP (with one “I”) or an IBIP is detrimental for consumers since they cannot compare costs anymore. A taxonomy could be contrary to comparability between different PRIIPs types.

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?

The aim of the PRIIPs Regulation is to ensure the cross-sectoral comparability of different products. This principle should be retained since it is the key principle of the PRIIPs Regulation. Consumers comparing different products were to be presented with risks, performance and costs following different methodologies

might assume that the information is indeed comparable and make wrong investment decisions.

Therefore, we support the degree of standardisation in the PRIIPs KID template. We believe that standardised information can be compared best.

Furthermore, PRIIPs is the most modern cross-sectoral framework. Therefore, the sectoral legislation should be adjusted to follow PRIIP and not the other way round.

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 believe that greater differentiation is not necessary. If there are product-specific features that are not relevant to other product groups (as specificities of IBIPs such as investment and biometric protection), they should be duly considered within the overall PRIIPs KID.

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

We do not see the necessity in grouping of products. It would impede comparability for consumers.

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?

The PRIIPs KID currently solely focusses on the investment part of the product. Insurance features and biometric protection are not add-ons to IBIPs but key elements of the IBIPs. Therefore, these elements should be elaborated more prominently. In particular:

- The section on biometric protection in the PRIIPs KID simply lists lengthy and badly structured figures about the benefits and costs. Same costs are shown several times in different ways leading to redundancies. The section should be improved – regarding the length of information, the PEPP KID is a positive example for this.
- Performance scenarios in the PRIIPs KID should allow for showing the possible outcomes in terms of annuities as it is done in the PEPP KID
- Guarantees are a valuable feature for consumers, and they should be positively highlighted in the

PRIIPs KID as it is the case in the PEPP KID.

The objectives of the product should not be restricted only to the investment part but rather relate to the overall product. The use of layering and cross-referencing through hyperlinks should be promoted. As an example of what can be layered, the section “How can I complain?” might not be necessarily displayed in the first layer.

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

We support the use of visual icons in the PRIIPs KID. IPID is a good example of this. As regards a layering approach/Dashboard see our answer to Q19.

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)

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

Past performance is highly misleading for the consumers and it should not be included in the PRIIPs KID.

First and foremost, the ESAs write that past performance "is key information to inform retail investors about the risk-reward profile of certain types of PRIIPs". However, the past performance is neither part of the risk nor the reward of the products - a profile always requires more than one scenario. In the past not all risks and rewards need to have materialised. In fact, it does not provide consumers with any relevant information for his product decision. But this is exactly the mistake many consumers make: although it is widely known that past performance is not a predictor of future outcomes, behavioural studies show that consumers still assume that the future outcomes are influenced by the past performance and will be misled by this information causing mis-buying. Past performance fosters procyclical behaviour and it inherits extrapolation and survivorship biases.

Furthermore, for certain products (that e.g. include guarantees and biometric protection) past performance does not exist on a product level. Artificial past performance would be misleading for products, e.g. since it is impossible to value biometric cover and guarantees a posteriori.

Performance scenarios should be forward-looking and show to consumers that outcomes depend on the market and indicate which outcomes are possible at recommended holding period. In Germany, forward-looking scenarios are used for all types of Riester pensions which can be either funds-based or insurance-based. There have been no difficulties reported by consumers. Therefore, we disagree with EIOPA that future performance scenarios are inherently difficult to find. However, a certain framework is required so that not every provider calculates with its own capital market model. The corresponding example for a stochastic model in PEPP would also be a good starting point for PRIIP. But it should be done without taking inflation into account. Inflation has the same effect for all providers and therefore does not represent a differentiation criterion. Moreover, it makes the models more complex.

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?

Performance scenarios should be forward-looking and show to consumers that outcomes depend on the market and indicate which outcomes are possible at recommended holding period.

It would be helpful to clarify the purpose of performance scenarios: they inform the consumers about the uncertainty of future return and show possible outcomes. We also favour four performance scenarios, so that none is wrongly considered by consumers as most likely outcome.

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.

The GDV is in favour of maintaining the MOP representation according to Article 10(b) . Therefore, this approach would be too burdensome for insurers. The option for a generic BIB, should be preserved. A KID for all products and for all (possible) investment options leads to the consumer being overwhelmed by the multitude of information on the same product.

Furthermore, the new RTS already proposed changes to MOPs representation. It remains to be seen how the changes will affect consumers comprehension of the PRIIPs KID for MOPs.

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?

While we understand the intention, this approach is too simplistic and besides it does not work for any German MOPs: German MOPs are not “wrappers”. The most common MOP is a hybrid product where consumers’ investment is allocated into general account of insurers as well as funds consumers choose. The exact amount of money in each pot follows a dynamic allocation mechanism. Therefore, the costs of each component, in particular in monetary terms, could not be stated separately.

Furthermore, since PRIIPs KID shows costs in absolute monetary costs, the underlying funds will always artificially look less expensive since their RHP is much shorter than the RHP of the insurance product.

Finally, since the underlying investment option is an integral part of the overall product, consumers will be confused if they were to read about it in two different documents. Therefore, it is important that the product KID describes the product itself as well as the underlying investments as part of it.

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?

First, the new RTS already proposed changes to MOPs representation. It remains to be seen how the changes will affect consumers comprehension of the PRIIPs KID for MOPs.

The use of one (or more) investment profiles or standard allocations could support the understanding of the customer. In order to avoid legal risks, however, care must be taken in the actual implementation that the customer does not misunderstand these standard allocations as investment recommendations.

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

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

In the final draft RTS amending the PRIIPs Delegated Regulation submitted to the Commission in February 2021 (and adopted by the Commission on 7 September 2021), the ESAs sought to introduce changes to the way that cost information is presented in the KID, in particular for non-insurance packaged retail investment products (PRIIPs)[1]. One of the aims of these changes is to achieve a better alignment with disclosure requirements in MiFID and IDD.

At the same time, the ESAs have received representations from stakeholders that there might still be inconsistencies or misalignment between the PRIIPs KID and disclosure requirements in other legislative frameworks. This issue is also related to the issue of appropriate differentiation between different types of PRIIPs (see Section 3.7).

Since the issue of consistency between different disclosure requirements for retail investment products is also addressed in the calls for advice to ESMA and EIOPA, the ESAs will, in particular, coordinate the work on this aspect, and consider the appropriate mandate within which to address any issues that arise.

[1] As defined in point (1) of Article 4 of the PRIIPs Regulation

39. Taking into account the proposals in the ESAs’ final draft RTS, do you consider that there are still other inconsistencies that need to be addressed regarding the information on costs in the KID and information disclosed according to other retail investor protection frameworks?

In our view the changes made in 2021 are a step backwards and must be revoked after the RIS is implemented: the first version of the RTS had a truly comparable representation of costs of all PRIIPs. Moreover, there was consistency of representations of total costs (table 1) and composition of costs (table 2). The changes introduced in 2021 thwart the principle of comparability since PRIIPs (with one “I”) and IBIPs now follow different sector specific representations making it impossible for consumers to compare PRIIPs and IBIPs. We believe that sector-specific information requirements should be adjusted to PRIIPs KID and not the other way round.

3.11 Other issues

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

We believe that insurance features are not shown well in the current PRIIPs KID. However, for consumers that purchase insurance they are key.

- The section on biometric protection in the PRIIPs KID simply lists lengthy and badly structured figures about the benefits and costs. Same costs are shown several times in different ways leading to redundancies. The section should be improved – regarding the length of Information the PEPP KID is a positive example for this.
- Performance scenarios in the PRIIPs KID should allow for showing the possible outcomes in terms of annuities as it is done in the PEPP KID
- Guarantees are a valuable feature for consumers, and they should be positively highlighted in the PRIIPs KID as it is the case in the PEPP KID.
- The objectives of the product should not be restricted only to the investment part but rather relate to the overall product.

We believe that the methodology for the performance scenarios should be revised to have a stable robust model that uniformly works for different products. The ESAs should carefully investigate concepts that exist on national level. For example, the German model for Riester could serve as a benchmark for a forward-looking stochastic simulation model.

We are convinced that a trade-off between simplicity and functionality should be sought. For example, inflation should not be modelled as part of the performance scenarios. First, inflation is not product-specific. Second, it strongly depends on the host Member State of the product and would confuse consumers that compare products launched in different Member States. Finally, we believe that it is easier for consumers to understand inflation if it was explained qualitatively providing some examples how prices evolve. Quantitative information should be part of advice where it can be tailored to the personal situation of the customers

A further issue of considerable importance arises from the high degree of standardisation of the PRIIPs KID. We understand that the standardisation of the wording of the KID aims to enhance the comparability of products across sectors. This, however, should not come at the price of material inaccuracies of the content. If the correct terminology deviates between sectors, then it is the correct terminology which should be used. In some instances, providers are bound by EU or national law to use specific terminology in their terms and conditions, in other mandatory customer information or in marketing material. In these cases, transparency and reliability are compromised if the wording of the KID does not match the accepted sector specific terminology. For example, while in the PRIIPs KID the total amount invested is described by the word "investment" ("Anlage" in the German language version), in Germany this usually designates the savings part of the premium. At the same time, in German insurance contract law the term "insurance premium" ("Versicherungsprämie" describes the total amount paid while in the PRIIPs KID it refers to the part which is the biometric premium. This can be confusing for consumers and potentially create legal problems. The rules on the KID should, therefore, allow for divergent wording in cases where this is necessary to take account of established sector specific or national terminology.

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