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

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1. General Information

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

- [ ] Confidential
- [x] Public

* Stakeholder

European Fund

* Sector

- [x] 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.

In general terms, EFAMA considers that this Call for Evidence and any subsequent proposals for revision of the PRIIPs Regulation should come after assessing in practice the revised PRIIPs RTS to be implemented from 31 December 2022, both to retail AIFs and UCITS.

This is essential, as fund managers have, so far, very limited direct investors' experience with the current PRIIP KID due to the fact that UCITS funds were so far exempt from the PRIIPs Regulation's scope and fund managers only provided PRIIP KID data to insurance companies to produce their own PRIIP KIDs. This being said, the ESAs should consider that, due this shift from the UCITS KIID to the PRIIP KID, fund managers are currently mobilising significant resources in order to prepare implementation of the revised RTS by 31 December 2022. In any case, a situation must be avoided that leads to ongoing, incremental changes of the PRIIP KID over the coming years or even fundamentally revising the PRIIPs framework after a few short years of existence.

In our opinion, it is important to implement the revised PRIIP KID and allow retail investors the necessary time to adapt to these changes. One must remember that many retail investors (investing mainly into funds) will encounter the PRIIP KID for the first time, noticing several key differences to the already familiar UCITS KIID. A certain stability in the foreseeable future is essential to ensure investor confidence and avoid unnecessary costs of a constantly changing PRIIP KID which are ultimately borne by the investors.

We, therefore, consider that any substantial changes to the PRIIPs framework must be based on empirical evidence and consumer testing. This allows that shortcomings are properly identified before substantial changes are proposed. It is clear that this essential evidence gathering step can only happen well after UCITS funds have started producing the PRIIP KID.

Therefore, EFAMA's recommendations related to changes in the PRIIPs Regulation should be treated only as adjustments to the existing framework – with therefore a very limited value for the time being due to the forthcoming implementation of the revised RTS and their extension of scope to UCITS. EFAMA has previously expressed the recommendations below, such as the inclusion of past performance in Article 8 of the PRIIPs Regulation. In this Call for Evidence, we are reiterating the changes that we consider should have been in the current version of the PRIIPs Regulation and its RTS.

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?

UCITS and a very large number of AIFs are currently exempt from producing a PRIIP KID. Thus, our first-hand retail investors' experience with the PRIIP KID is currently very limited. While those funds are not yet producing the PRIIP KID, extensive statistical data is produced by both EFAMA and its national associations.

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 understand that this question is addressed to product distributor or financial advisor and that our direct experience with the PRIIP KID is limited. This being said, our experience with the UCITS KIID has shown that retail investors mostly focus on the SRRI and costs. We would assume that this focus will not change with the switch over to the PRIIP KID.

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?

[Not applicable]

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?

[Not applicable]

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?

We believe that the current rules are sufficient for funds. In particular, marketing information and KID information are complementary and should remain so: basic information regarding risks, costs, etc. are provided by the KIID/KID; additional information is usually provided through marketing material and periodic reporting.

In its Guidelines on fund marketing communication, ESMA reaffirmed the general principle according to which all marketing communications (both off- and online) promoting open-ended funds to retail investors should refrain from using overly technical formulations, provide an explanation of the terminology used, be easy to read and, where appropriate, provide an adequate explanation of the complexity of the fund and the risks related to the investment to help investors in understanding the characteristics of the promoted fund.

Having said this, we believe different secondary rules on marketing and advertising of investment products constitute an obstacle for retail investors to access investment products. In essence, the same level of investor protection should apply no matter the type of distribution channel being used, which includes ‘digital’ sales. The, rules, however, must be adapted to fit the existing format constraints (e.g. size issues in social media channels or problems integrating long-winded disclaimers into videos and banners posted on social media or websites).

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?

The comprehension alert is generally not relevant for most funds distributed to retail investors, as these are either (non-structured) UCITS or AIFs designed with retail investors in mind. Also, we note that the investor profile in the 'What is this product' section is more specific than a general comprehension alert.

It is important to note that (non-structured) UCITS are classified as non-complex financial instruments under MiFID II and can be sold execution-only. Unfortunately, the "white list" of non-complex products in MiFID II currently does not recognise the existence of national retail AIF regimes comprising comparable safeguards to the UCITS regime in some Member States. EFAMA considers that these types of AIFs should also be considered as non-complex financial instruments and thus should also not require a comprehension alert.

We take this opportunity to stress that EFAMA does not agree with ESMA's Q&As stating that only non-structured UCITS can be considered non-complex, for the same reasons stated above. In any case, our understanding is that the relevant factors featured in recital 18 PRIIPs Regulation do not correspond with the criteria for complex financial products provided under Article 57 of MiFID II Delegated Regulation which means that there is no intended correlation between the product status for the purpose of "execution only" distribution under MiFID and IDD on the one hand and the relevance of the PRIIPs comprehension alert on the other.

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

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

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

[Not applicable]

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

In our experience, financial advisors rather look at the fund's risk profile and not at the comprehension alert.

3.3 Survey on the practical application of the rules

Extract from the call for advice:

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

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

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

12. For PRIIP manufactures or sellers:

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

Some of our members have produced estimates of the budgeted costs to be incurred in their production when preparing for the implementation of the forthcoming RTS, both for AIFs and UCITS funds, by the end of next year. These figures vary due to the size of the fund managers, the number of funds under management, the number of dedicated full-time employees and the level of automatisation to produce KIDs. While EFAMA is therefore unable to provide any costs or cost ranges, we would like to draw the ESAs attention to our infographic (https://www.efama.org/sites/default/files/files/Priips%20large%20infographic.jpg) that summarises the challenges our members face replacing UCITS KIIDs with PRIIP KIDs. The infographic shows the many entities involved in the process and the steps required to prepare a PRIIP KID.

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.

Please see our reply to question 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?

Please see our reply to question 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?

As the PRIIP KID is not applicable yet to the vast majority of EU retail funds, it is far too early to say as we cannot draw conclusions based on a limited number of cases at this stage. Nevertheless, we have identified in our preparation for the implementation that there are inconsistencies regarding the information on costs in the KID and information disclosed according to other retail investor protection frameworks. For more detail on inconsistencies in the regulatory framework, please refer to Q39.

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?

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?

Our experience as fund manufacturers is that currently, fund distributors ask us generally for a digital format of KIIDs/KIDs.

In general, information should be digitally accessible and allow for interactivity to empower and engage consumers while allowing investors to have a paper document. There are more engaging and informative means of presenting costs and performance information than the current disclosure documents, which can be made available only in a non-interactive pdf format. Moving away from a standardised one-size-fits-all approach would allow consumers to tailor the presentation to a format that is most intuitive to them, based on a common set of data. It is also important to highlight that the non-interactive format of the KID increases the production burden for product manufacturers.

In light of the above, we have been supportive of the recent MiFID ‘quick fixes’, which implemented a ‘digital first’ disclosure policy. Please see our answers to Q18 and Q19.

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?

Our experience as fund manufacturers, electronic versions of the KID (PDF documents) are the preferred medium.

To ensure consistent data delivery both fund managers and insurers have developed an industry-led data standard called the European PRIIPs Template (EPT), under the umbrella of FinDatEx (Financial Data Exchange Templates). Such a standardised template, based on the legal PRIIPs requirements, is essential to ensure data flow between product manufacturers (such as fund managers) and insurance companies, allowing the latter to produce their PRIIP KIDs in turn.

For your information, FinDatEx is a joint structure established by representatives of the European Financial Services sector industry with the view to coordinate, organise and carry out standardisation work to facilitate the exchange of data between stakeholders in the application of European Financial markets legislation. As of April 2021, FinDatEx’s members are the European Fund and Asset Management Association (EFAMA), the European Banking Federation (EBF), Insurance Europe (link), the European Savings and Retail Banking Group (ESBG), the European Association of Cooperative Banks (EACB), the European Structured Investment Products Association (EUSIPA), the European Association of Public Banks (EAPB) and Pensions Europe.

Besides the EPT, FinDatEx has also developed: (1) a MiFID template (called the European MiFID Template, EMT) which standardises target market and cost disclosure information between product manufacturers and distributors, (2) a MiFID feedback template (EFT) and (3) a Solvency II template; and is currently working on (4) an ESG template (EET) to exchange SFDR and taxonomy-related information.

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

We have been supportive of the recent MiFID 'quick fixes', which established electronic disclosure by default ('digital first' disclosure policy) while allowing investors to request paper disclosure. This is essential as not all retail investors have access to the internet. This guiding principle should be extended to all disclosure requirements so distributors of retail financial products are required to make pre-contractual disclosure documents available in electronic format by default, but on paper upon request.

Also, in line with the PEPP KID approach, investors increasingly require interactive digital formats with information layered to render it more accessible. Nevertheless, as a second, essential step further in-depth discussions are needed to identify primary and secondary disclosure points to tackle the current information overload to retail investors while avoiding abusive use of layering. One example of how layering could benefit retail investors is to allow consumers the choice of visualization options for costs in a table, a bar chart or a graph depending on what they feel most comfortable with. Additionally, digital comparison tools (but also labelling & certification) may enable investors to compare different investment products more efficiently than the existing PRIIP KID.

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?

Yes, as stated in the previous question, and with respect to below considerations, EFAMA considers that certain design elements of the PEPP KID may help investors' comprehension and should be considered in a future review to ensure that these elements also suit the PRIIP KID.

First, the "electronic format by default" as also taken by the recent MiFID 'quick fixes', allows investors to have more accessible information in the digital format while ensuring they can still request a paper disclosure. Second, as mentioned previously, layering of information in the electronic format could ensure shorter and thus more accessible information being provided to retail investors. As stated above, more detailed discussions need to take place to ensure that layering is of benefit to retail investors and that both online and offline disclosure work together harmoniously.

We consider the current nature of the PRIIP KID to be overly prescriptive in each of the elements to be disclosed, making it impossible to insert the (soon to be needed) ESG information into the PRIIP KID (unless it is squeezed together with 'other information', such as a link to the past performance), which would be unhelpful in providing such new key information elements to investors.

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.

While we consider KID a generally useful tool for retail investors to help with their investment decisions, we have strong doubts and reservations whether the PRIIP KID should be extended to pension and individual pension products. In essence, the PRIIP KID, in its current form, already struggles to provide meaningful and comparative information across different product types of investment products to retail investors. This situation would further be exacerbated by the PRIIPs Regulation’s extension to pension products. While pension products will need their individually designed KID, the PEPP KID will, in many instance, be a better starting point for such a discussion.

The PRIIPs SRI provides a good example. It currently shows the inherent volatility and risk return profile of a product. It does not, however, give an investor an indication of the overall risk profile of a portfolio of products in the context of an investor’s investment time horizon. More flexibility in risk profiling at a portfolio level must continue to be permitted to allow advisors and portfolio managers to combine individual products with different inherent risk profiles to achieve the optimal balance between managing short, medium and long terms risks. An example of this broader approach can be seen in the PEPP KID which allows, for example, a lifecycling strategy with a high equity component to be presented as low risk when held for its recommended holding period based on the probability of a minimum return of invested capital. Many other pension products also use lifecycling strategies designed to have a dynamic and changing risk profile where the proportion of equities and lower risk assets changes over time. As pension fund investors have a long term investment horizon the long term risk of high levels of equity exposure early on in their career is essential to achieving expected outcomes. This is one example where the application of the PRIIPs SRI methodology would be counterproductive. The PEPP methodology of looking at confidence levels of achieving a minimum expected return by retirement constitute a better starting point.

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?

The PRIIPs Regulation's current scope including the product categories of structured products, funds and insurance-based investment products should not be changed.

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.

In line with our previous response, we agree on keeping UCITS and AIFs offered to retail investors within the scope of PRIIPs. We understand that there have been some discussions around specific non-fund PRIIPs needing further clarification (funeral insurances, plain vanilla bonds, etc.).

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?

Packaged or wrapped products that provide an indirect exposure to assets or reference values are already in scope.

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

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

[1] For example an annuity.
[2] This might include, for example, employment based incentive schemes

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?

The concept of being “made available to retail investors” features in both the UCITS Directive and PRIIPs Regulation. We believe that the concept is working well and does not need further 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?

We believe a taxonomy of PRIIPs is a complex solution for the problem of current inconsistencies in the regulatory framework for investor protection. Please refer to our responses in Q7, Q13 and Q28 and Q30 below.

Rather than a taxonomy, we recommend looking at what is the most effective way of presenting key concepts such as costs, risk and performance depending on product type and adjusting the rules accordingly – e.g. see our comments on presenting performance data below.

We believe more flexibility in the presentation of core information between different product types would be beneficial in terms of driving greater investor empowerment. For example, performance presentations and considerations could differ for structured and guaranteed products as opposed to investment funds whose performance is linked to market performance. Differences also arise when we take considerations on cost and risk into account. A loss in theoretical comparability will be more than offset by better explaining the fundamentals for each type of investment product and providing investors with more meaningful information. Standardising the disclosures for similar types of investment products will maintain broad comparability. Digital presentation tools could assist in delivering this approach.

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?

As stated previously, the majority of investment funds have not yet provided a PRIIP KID and will, most likely, only do so from 01 January 2023. It is, therefore, essential, to collect further feedback (including consumer testing) once this switch over has happened, before making any substantial changes to the current PRIIPs Regulation. This is also crucial, as retail investors must be provided with fairly stable disclosure information to ensure that they can make informed investment decisions. Please consider this important comment in our responses to Questions 28-34.

EFAMA continues to support the overarching aim of the PRIIP KID as a single pre-disclosure document for all types of investment products. However, recent experiences with the current PRIIP KID over the last couple of years have shown that its current aim to provide a meaningful comparison between different investment products is almost impossible.

Indeed, one of the current fundamental problems of the PRIIP KID stems from its inherent conflict to provide clear, fair and not misleading information and comparability between widely different types of investment products. In their current iteration, the prescriptive PRIIP KID rules are overly focused on comparability which has come at the cost of misleading information. This means the current PRIIP KID has not sufficiently contributed to its aim of increasing retail investors' understanding.

To remedy this situation, a successful PRIIP KID must focus on what information is relevant to retail investors for each type of investment product. Such flexibility is fundamental because each type of investment product provides a different value proposition and thus requires slightly different disclosures on costs and performance. For example, EFAMA encourages the inclusion of information on past performance in the case of linear products like investment funds.

While past performance information for open-ended and non-structured funds is critical for a retail investor's understanding of these products, we appreciate that forward-looking performance scenarios are essential elements for structured bonds and insurance-based investment products. For these products, past performance may be misleading and they would consider forward-looking performance expectations to be of crucial importance to ensure a retail investor's understanding of the product.

As explained above, a loss in theoretical comparability will be more than offset by better explaining the fundamentals for each type of investment product and providing investors with more meaningful information. Standardising the disclosures for similar types of investment products will maintain broad comparability.

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?

The development of broad product groupings or buckets of similar products, together with less standardization in the KID template, would allow manufacturers to disclose the most relevant information for different buckets. This approach will ensure comparability for investors between substitute products. While there is a loss of theoretical comparability between products that pertain to different buckets, the explanation of each product becomes more understandable for investors.

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

In line with our response to Q28, the need for different disclosures in costs and performance indicators is a way to bucket investment products. In this case, investors will benefit from a less-standardised PRIIP KID that conveys the same information for similar types of products, avoiding situations as the current disclosure of past performance information for structured bonds or insurance-based investment products. To disclose this kind of information in products that are better described by forward-looking scenarios may lead to misleading information for the consumer.

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?

EFAMA continues to believe that Article 8 of the PRIIPs Regulation is too prescriptive in its current state. We refer to our answer to Q28 as regards to the needed flexibility in the PRIIP KID, as each type of investment product provides a different value proposition and thus requires slightly different disclosures on costs and performance.

As stated in Q39, it is not easily possible to insert (soon to be needed) ESG information into the PRIIP KID without complicated and long-winded changes to the PRIIPs Regulation and its RTS. As the current PRIIP KID is prescriptive in each of the elements to be disclosed, it is impossible to provide this necessary information (unless it is squeezed together with ‘other information’, such as a link to the past performance), which would be unhelpful in providing such new key information elements to investors.

EFAMA believes that information on past performance in the KID in the case of linear products like investment funds should be integrated in Article 8 of the PRIIPS Regulation. Past performance information, while not intended to give an indication of future performance, would better inform retail investors before making their investment decisions, instead of relying solely upon forward performance scenarios that can mislead the consumer when presented alone.

Regarding performance scenarios, we deemed it necessary to look for a better term such as “illustrative scenarios” that better reflects their nature and the methodology behind them. Additionally, it should be stated clearly in the form of a disclaimer, that performance scenarios show estimates of a range of future outcomes from the distribution of past returns of the PRIIP, and should not be considered as definite predictions of future performance. This approach would upend the long-standing practice of warning investors that past performance should not be seen as an indication of the future. EFAMA deems that the inclusion of past performance in parallel with the performance scenarios should allow retail investors to have a more complete picture of the performance of a product.

While past performance is not a guide to future performance, there are several reasons to show past performance including historic proof of an active manager's ability (or not) to regularly outperform the fund's benchmark, or an index fund's ability to replicate the benchmark index. Depiction of past performance also facilitates an informed discussion on cost versus returns which is currently not feasible with the PRIIP KID. This discussion is increasingly important given both investor and supervisory focus on the value provided by investment products such as investment funds where a meaningful discussion needs to reflect the interaction between both costs and performance. The asset management industry has considerable experience of presenting past performance in a standardised way in UCITS. The UCITS presentation of performance also demonstrates the volatility an investor may encounter whereas the PRIIPS scenarios necessarily suggest smoothed performance paths. We are also supportive of the inclusion of a disclaimer as to the relevance of past performance in the PRIIP KID, highlighting that it is not a reliable indicator of future results.

We also caution against showing past performance in the form of an average and support the use of the existing UCITS KIID methodology. One of the essential benefits of showing actual past performance is to showcase a PRIIP's past volatility and the effect of specific market events – this reinforces messages such as the importance of long term investors remaining invested at times of heightened market volatility.

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

In general, disclosure rules must be adapted to fit the existing format constraints of digital communications, including social media (e.g. size issues in social media channels or problems integrating long-winded disclaimers into videos and banners posted on social media or websites).

With regards to visual icons, their general use should be allowed. However, we believe that detailed rules on their use are not necessary, as long as they are not misleading.

In line with our response to Q19, we believe the "digital by default" format, as it is in the case of the PEPP KID will allow investors to have more accessible information in the digital format while ensuring they can still request a paper disclosure.

In line with the idea of digital disclosures, we believe that allowing layering of information in the electronic format ensures investors the KID to be shorter and thus more accessible. Nevertheless, as previously mentioned, further detailed discussions on how layering can work in practice would still need to take place.

Additionally, other measures that can improve the structure, format and presentation of the KID to adapt to the digital era can be found below:

- Clear rules to prescribe presentation formats (e.g. readable font size, use of designs/colours, etc.)

- Certain key information (e.g. fees, charges, payment of inducements, information relative to performance, etc.) is displayed in ways that highlight the prominence

- The format of the information is adapted to use on different kinds of devices (for example through the use of layering). As regards the format and layout, we are certain that a clear structure helps investors to understand the information (e.g. graphics/charts/narratives).

- Appropriately labelled and relevant hyperlinks are used to provide access to supplementary information

- The use of hyperlinks is limited (e.g. one click only – no cascade of links). We believe that the layering of information (and the use of hyperlinks) can help in finding a balance between disclosing key information while at the same time allowing for more details if required by the investor.

- Digital comparison tools (but also labelling & certification) may enable investors to compare different investment products more efficiently than existing information sources like the PRIIP KID.

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?

We agree with the ESAs assessment that allows for the inclusion of past performance in the section of the KID "What are the risks and what could I get in return", as well as future performance, for certain types of funds and insurance-based investment products.

Having said this, we would like to reiterate the importance of explainability over absolute comparability. In their current iteration, the prescriptive PRIIP KID rules are overly focused on comparability which has come at the cost of misleading information. This means the current PRIIP KID has not sufficiently contributed to its aim of increasing retail investors' understanding.

To remedy this situation, a successful PRIIP KID must focus on what information is relevant to retail investors for each type of investment product. Such flexibility is fundamental because each type of investment product provides a different value proposition and thus requires slightly different disclosures on costs and performance. Please refer to our responses in Q28 and Q31.

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?

In line with our previous response, EFAMA continues to support the inclusion of past performance in the KID, preferably in L1 text. Based on past experiences, we agree that past performance should be included in the KID for linear PRIIPs (AIFs, UCITS and unit-linked insurance-based investment products) and linear investment options (AIFs, UCITS, internal insurance funds).

Its inclusion is of paramount importance as past performance (although not a guarantee for the future) provides investors with comparable objective information about the relative merits of product managers and the capacity of an investment product to meet its objectives and to deliver value for its investors. The ongoing focus on costs and charges as indicated in ESMA's ongoing CSA underlines the importance of being able to view reliable past performance data. The question of whether product charges are high or low cannot be divorced from an assessment of performance, allowing investors to assess whether higher costs are indeed reflected in increased performance or other forms of added value such as downside protection. Please see response to Q31 for more detail.

EFAMA strongly believes that the existing disclosure standards in the UCITS KIID, to which investors have become accustomed over recent years, are the right starting point for the upcoming discussions. Similar to the UCITS KIID, the use of an appropriate benchmark, where relevant, will inform investors how the fund has performed in the past. Furthermore, as stated in Q31, we deemed it necessary to look for a better term for the forward-looking scenarios such as "illustrative scenarios" that better reflects their nature and the methodology behind them. For the same purpose, a disclaimer about the relevance of past performance must also be included in the PRIIP KID, highlighting that it is not a reliable indicator of future results.

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.

> Although fund manufacturers do not produce MOP KIDs themselves, the different solutions proposed by ESMA can alter the process of exchanging information between fund manufacturers and insurers. Especially, a PRIIP KID or another kind of information document for each investment option does not make sense. We fear that such a scenario could oblige insurance companies to manipulate the data provided by the fund manufacturer, which would as a result increase the risk and responsibility of the MOP manufacturer. By keeping the MOP as general as today, any issue related to the ex-post switching of the underlying investment option in case of tailor-made MOPs is also avoided.

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?

Please see our answer to question 35

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?

Please see our answer to question 35

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?

Please see our answer to question 35

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 (PRIPs)[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?

Yes, numerous substantial inconsistencies exist between MiFID/IDD and PRIIPs in how product cost information is calculated and presented to investors.

(Those few) retail investors carefully studying all pre-disclosure documents (e.g. MiFID and PRIIP KID) will be confused as to why production costs are not aligned. This regulatory misalignment must be tackled by future EU actions, as it creates mistrust in the financial products itself, adding to the commonly touted view in the media that people are ‘ripped off by the financial industry. MiFID uses a zero-return assumption while the PRIIP KID uses the cost disclosures tied to complex future performance scenarios, resulting in diverging cost figures.

First, future cost disclosure must be aligned to disclosing the same cost information (i.e. MiFID and PRIIPs) to retail investors. In a sense, overarching frameworks like MiFID and IDD should provide the overall cost disclosure points and methodologies, which can be simply inserted into Key Information Documents. In any case, the current situation where the PRIIP KID created its cost calculation methodologies (which are different to MiFID/IDD) must be avoided. This does not mean that all disclosures should be the same, as investment, insurance and pensions products each provide different value propositions and necessitate diverging disclosures.

This being said, we know that the (current) PRIIP KID uses standardised investment amounts (e.g. EUR 10,000) due to its paper-document nature. With a digital PRIIP KID, however, it would be possible also to provide investors with individualised investment amounts and so fully align MiFID and PRIIPs cost disclosures.

Second, both MiFID II and PRIIPs 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. The arrival price methodology incorporates certain fundamental flaws (that could be rectified only to a certain degree by the revision of the PRIIPs RTS), and it is especially inaccurate to compute transaction costs for large orders, where more time between the order and the execution can cause overestimation of costs for the investor. In the context of this consultation, it is essential to point out that it can result in misaligned transaction cost disclosures between PRIIPs or MiFID. We believe it is important to define the format of ex post cost disclosure and to ensure that it is made separately to ex ante cost disclosures such as PRIIPs to avoid overcomplicating disclosure formats. Developing the use of digital formats would allow cost information to be layered allowing more detailed cost breakdowns to be accessed by those investors or their intermediaries or wish to see more granular information.

Third, the new RTS foresee to present fund cost components in the table “composition of costs” based on 0% annual return. For performance fees, this should then mean that in most cases, no cost amount will be shown (because no performance fee is generally being charged in such circumstances), even if a product has actually charged performance fees in the preceding years (and is likely to charge them in future). This understanding seems to be confirmed by the provision in Annex VI para. 68 b). Also, the explanatory text in the table “composition of costs” states in relation to performance fees that “The aggregated cost estimation above includes the average over the last five years” which implies that such average is not being presented here. However, this outcome seems not only counterproductive in terms of proper information of investors, but it is also inconsistent with the current cost disclosures under MIFID II. We understand from distributors that under MiFID II, they also assume a net zero performance for the purpose of illustrating the impact of costs on performance, but still account for the latest known performance fee figures in their ex-ante and ex-post disclosures.

Beyond cost information, other inconsistencies between the PRIIPs Regulation and other pieces of the investor protection regulatory framework are addressed in Q40.

3.11 Other issues

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

Guidance on how information on environmental and social objectives (Article 8(3)(c)(ii)) should be included in the KID has never been provided. However, given that the SFDR now provides for a coherent regime of disclosure for all PRIIPs including the templates, we would advise to, as a maximum, require a reference to such information in the PRIIP KID.

Moreover, we see a need to amend the current requirements for provision of PRIIP KIDs in case of successive transactions under Article 13 (4) PRIIPs Regulation and to align them with the current market practice under the UCITS Directive, as recommended by the ESAs in the final report from June 2020.

As it stands, the requirement to provide investors in saving plans (that represent the major case of application for “successive transactions”) with an updated KID whenever there is a change will cause major difficulties in the retail markets. In many Member States such as Germany savings plans on funds are very popular. In Germany, several millions of savings plans are being regularly invested by consumers, with most of these contracts already running for several years. We understand that a similar situation exists also in the Italian market.

In the past, there has been no reason to open an electronic mailbox when concluding a savings plan (since the KIID under the current regime only needs to be provided once). That is why many clients do not have electronic mailboxes. For instance, in the mutual and saving bank sector, communication via an electronic mailbox has been agreed with only 21 percent of the clients. This would mean that the KIDs for more than 3.5 million savings plans need to be sent by post (whenever there is a change in the KID) if a more flexible approach is not allowed. This is not only operationally burdensome, but would also cause high costs and production of paper to the detriment of the environment. Given that the regular saving amount are generally low, these costs would jeopardise the economic viability of the saving plan offerings.

In order to remedy the situation, we strongly support the ESAs' proposal to require active provision of the PRIIPs KID in case of saving plan contracts only for the first transaction. At the same time, distributors should be required to inform the client where the up-to-date KID can be found; enabling the client to get the latest version of the KID whenever he wants to. That would prevent distributors from sending millions of letters every time the KID has been modified. This also aligns with the current market practice in Germany: investors can generally either download an up-to-date version of the UCITS KIID via their online banking service, from the manufacturer’s website or they can contact their distributors and receive the KIID there. This procedure would strike a proper balance between the need for easy access to the latest product information and the practical feasibility for the operators of saving accounts.

Beyond costs information, other inconsistencies between PRIIPs and other legislation are to be addressed. It is important to reiterate that our comments reflect only the interlinkages between PRIIPs and MiFID. We understand that not all MiFID disclosures may be suitable for other types of financial products (insurances and pensions with much longer recommended holding periods). Generally speaking, however, the same principle should apply that risk information should be calculated and presented to (retail) investors in the same manner.

1. Risk information: Again, substantial differences exist between MiFID and PRIIPs. The former 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.

2. Performance information: there are substantial inconsistencies in how MiFID and PRIIPs calculate and disclose performance information. Essentially, 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”. 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. Other elements: a more coherent EU disclosures policy should ensure that disclosure elements from the overarching EU frameworks (such as MiFID and IDD) are simply inserted into a Key Disclosure Document without the latter creating its own set of (sometimes contradicting) calculation and disclosure methodologies.

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