

# POSITION PAPER



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

ESBG (European Savings and Retail Banking Group)

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

Fields marked with \* are mandatory.

## 1. General Information

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

- Confidential  
 Public

\* Stakeholder

ESBG

\* Sector

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

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## 2. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

[2] Call for advice

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

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

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

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

## 3. Call for evidence

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

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Extract from the call for advice

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

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

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

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

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

In some European markets, there are a large number of PRIIPs that retail investors can purchase. In the area of structured products (PRIPs) alone, there are more than 1.5 million products.

**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?**

The KIDs do not play a role in product selection per se; there are other sources of information here. The KIDs, which are designed as information documents for retail investors, are also not suitable as a basis for product comparisons by the sales offices. For the purpose of product approval, the sales offices have designed separate technical solutions to obtain the required information. These tools allow, for example, the filtering of products according to certain product designs such as capital protection or certain underlyings. However, there are individual contents of the KIDs that are used by the institutions for product selection. This includes, for example, the SRI, which is also used for the target market under MiFID II product governance. In this context, the SRI is often used in determining the client group to which the product is to be marketed. In our view, however, many other contents, such as the performance scenarios shown in the KIDs, do not play any role in product selection. We are not aware of any automated tools that help self-deciders to select products based on the KIDs. We also consider this to be difficult. In addition, there is the offer of investment advice (by human advisors or robo advice), where clients receive a recommendation tailored to their preferences.

**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?**

In addition to the mass of products and the existing solutions, which are much better suited to the selection of products (filter functions), it is above all the methodological errors in the legal requirements for drafting the KIDs (in particular the faulty performance scenarios) that mean that they are only used to a limited extent for product selection.

**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?**

The KIDs are used in part to explain to customers during the advisory process how the product works or the risk associated with the product. With regard to other content (such as the often erroneous performance scenarios), investors often receive explicit advice not to use the figures presented as a basis for their investment decisions. Many institutions use supplementary product information, which contains further information about the products.

**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?**

As self-generated information documents must be clear, unambiguous and not misleading, they must not contain errors, as unfortunately found in many KIDs. Self-generated information must also not contain contradictory information, as is the case with the statutory PRIIPs KIDs and the ex ante cost information under MiFID II with regard to the product costs disclosed.

If errors are found in the self-produced information documents, they are quickly corrected. In contrast, due to the methodological errors in the legal requirements, the KIDs have already contained errors and divergent information to other mandatory information since the beginning of 2018 without these being addressed in a fundamental review.

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

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Extract from the call for advice:

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

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

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

To our knowledge, all packaged investment products under the PRIIP Regulation (PRIIPs) contain a comprehension alert, as PRIIPs are always complex products within the meaning of Article 25 (4) MiFID II.

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

We assume that the KIDs of all 1.5 million structured products that qualify as PRIIPs that can be purchased in the markets contain a comprehension alert.

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

As the comprehension alert is included in almost all KIDs, the reference has, to our knowledge, no effect on the behavior of investors.

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

As mentioned, the comprehension alert is included in almost all KIDs for PRIIPs.

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

Since the comprehension alert is included in almost all KIDs, it is not considered very relevant by advisors.

### 3.3 Survey on the practical application of the rules

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Extract from the call for advice:

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

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

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

**12. For PRIIP manufactures or sellers:**

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

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

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

The costs of an individual KID can hardly be seriously estimated, as the KIDs are created on the basis of a general process and thus only the total costs are known. Large issuers report that setting up a process to create KIDs as of January 1, 2018 cost between 3 and 5 million euros (per house!). Large issuers report that the cost of updating their KIDs costs over a million euros per year (for each house).

**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?**

To our knowledge, there are no significant discrepancies between the requirements of different national supervisory authorities, largely due to the detailed requirements provided by the ESAs, which ensure uniform supervisory practice. However, in individual cases, differing views on certain details have been reported. A critical view should also be taken of the requirement to provide ex ante notification to the relevant NCA set out in Article 5(2) of the PRIIPs Regulation, which can be applied by Member States. This in itself results in an inconsistency. Since to date only very few Member States have made use of this option, retaining this provision should be critically reviewed as part of a Level 1 review.

## 3.4 Use of digital media

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### Extract from the call for advice

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

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

Article 14 of the PRIIPs Regulation lays down rules regarding the types of media that can be used to provide the KID to the retail investor. It is specified that the use of paper format should be the default option where a PRIIP is offered on a face-to-face basis, but that it is also possible to provide the KID using a

durable medium other than paper or by means of a website, if certain conditions are met. These conditions include, for example, that the retail investor has been given the choice between paper and the use of another durable medium or website.

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

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

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

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

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

We do not have any concrete figures on the form in which the KIDs are currently provided. However, as the PRIIPs Regulation provides for priority to be given to paper-based provision, we assume that in many cases the KID is provided in paper form (this applies in particular to face-to-face business).

**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 the client’s point of view, it is particularly important that the documents they receive during the advisory or before the order are provided in a uniform format. For clients, it is not comprehensible if they receive certain documents in paper form and others electronically. As information under MiFID II is primarily provided electronically through the MiFID quick fix, this should also apply to the provision of the PRIIPs KID under the PRIIPs Regulation. The requirements for the provision of documents should be harmonised on the basis of the new MiFID quick fix rules.

In this respect, the European Parliament has just asked to eliminate paper as the default option in the PRIIPs Regulation (Packaged retail and insurance-based investment products (PRIIPs): key information documents. Extension of the transitional arrangement European Parliament legislative resolution of 23 November 2021 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS (COM(2021)0397 – C9-0326/2021 – 2021/0215(COD), Recital 7). The European Parliament has raised several issues that need to be addressed in the review of the PRIIPs Regulation:

“Those concerns need to be urgently addressed in order to improve retail investors' trust in financial

markets, both for the benefit of companies looking for funding and for the long-term benefit of investors. The need for a broader review was already set out in Regulation (EU) No 1286/2014, and its urgency remains unchanged. On the basis of such a review in accordance with Regulation (EU) No 1286/2014, the Commission is expected to submit, as a matter of urgency, a report to the European Parliament and to the Council accompanied, if appropriate, by a proposal to address the existing limitations.”

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

According to our knowledge, it is particularly negative for investors if they receive the information in different formats (e.g. individual documents in paper form and the others electronically). For this reason, it is important that the different requirements are harmonised. The role model should be the new requirements of the MiFID quick fix, which provide for the priority of electronic provision. This is in line with the view of the European Parliament (see Q 15).

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

It is also important for the sales offices that the information in the advisory process and before the order can be provided in a uniform format. If different formats have to be used here, this leads to incomprehension or even resentment among customers, which the sales offices want to avoid as far as possible (customer satisfaction as a goal).

With a view to cost-efficient and sustainable (i.e. resource-saving) information provision, manufacturers and distributors prefer electronic information provision. This also speaks in favour of transferring the provisions of the MiFID quick fix (priority of electronic provision) to the PRIIPs Regulation. This is in line with the view of the European Parliament (see Q 15).

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

In order to enable a uniform provision of information, the requirements for the provision of KIDs should be adapted to the requirements of the MiFID quick fix (priority of electronic provision). This is in line with the view of the European Parliament (see Q 15).

**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?**

Since distributors must provide clients with information in accordance with MiFID II (such as, in particular, ex ante cost information) in addition to the KID when distributing packaged investment products, which are regularly also financial instruments in accordance with MiFID II, the requirements for the provision of PRIIPs KIDs should be adapted to the requirements of MiFID II.

We are also critical with regard to the possibility of layering information. The most important information should be contained in the 3-sided KID so that the embedding of further information is not necessary. This could above all increase the feeling of investors that they are flooded with information (information overload).

## 3.5 Scope of the PRIIPs Regulation

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Extract from the call for advice:

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

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

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

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

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

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

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

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

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

We are not aware of clients having a lack of information on pension products due to the current exemption in the PRIIPs Regulation. For this reason, we see no need to restrict the existing exemptions.

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

In our view, it should be made clear in the review that the scope of application of the PRIIPs Regulation is limited to investment products and that products which serve to hedge risks are not covered. In addition, the exemption for bonds with a make whole clause, for which the legislator introduced a waiver for product governance in the MiFID quick fix, should be extended to the PRIIPs Regulation.

**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.**

Apart from the two points from question 21 (investment products and bonds with make whole clauses), we see no need to further specify the scope of application of the PRIIPs Regulation.

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

For bonds with Make Whole clauses, see question 21 above.

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

We consider the provisions of the ESAs in their Supervisory Statement to be largely correct. The Statement has led to a significant increase in legal certainty by eliminating ambiguities.  
Please refer to the answer to question 21 for concerns regarding the classification of bonds with make whole clauses.

**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

No, from our point of view the current scope of the regulation fits (with the exception of the references to OTC derivatives and bonds with make whole clauses mentioned in our answer to question 21).

**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?**

In our view, there is no need for clarification in the PRIIPs Regulation itself, as the PRIIPs Regulation correctly contains a restriction to products marketed to retail investors.  
However, the European legislator has recently created a regulation according to which professional clients should also receive a PRIIPs KID (or alternatively a UCITS KIID) when selling fund units. This regulation contradicts the requirements of the PRIIPs Regulation, which is limited to products for retail investors.  
This contradiction should be avoided by limiting the obligation to provide a KID (or an alternative UCITS-KIID) also for funds to retail transactions.  
This would be in line with a statement by the European Parliament that has also called for a limitation of precontractual information to retail investors ((European Parliament legislative resolution of 23 November 2021 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and Non UCITS (COM(2021)0397 – C9-0326/2021 – 2021/0215(COD))).

**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 diversity of the forms of PRIIPs, this will hardly offer any added value. It should also be borne in mind that any special rules for certain product groups will be at the expense of the comparability of KIDs, which is one of the main objectives of the PRIIPs Regulation.

However, should the legislator wish to continue to extend the PRIIPs Regulation to OTC derivatives, separate provisions should be created for these products, which are not investment products, to take account of their special features. (see Q 28).

### 3.6 Differentiation between different types of PRIIPs

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Following a targeted consultation on PRIIPs towards the end of 2018, the ESAs’ Final Report published in February 2019 (JC 2019 6.2), which proceeded further work on a review of the PRIIPs Delegated Regulation, stated (page 14):

- *Differentiation between different types of PRIIPs: taking into account information regarding challenges to apply the KID to specific product types, for example very short-term products or specific types of insurance or pension products, it is intended to analyse if it is appropriate to introduce some additional differentiation in how the rules apply to different types of products, while still adhering to the overarching aim of comparability between substitutable products.*

This aspect was considered during the review of the PRIIPs Delegated Regulation initiated in 2019, but this work was conducted within the constraints of the existing PRIIPs Regulation. In the context of reviewing the PRIIPs Regulation, consideration could be given to the following types of approaches:

- The development of broad product groupings or buckets of similar products. A more tailored approach could be taken for each of these groupings, with the aim to ensure the meaningfulness of the information and prioritising comparability within these groupings. This might also ease the comparability between the PRIIPs Regulation and sectoral legislation (such as MiFID, IDD) on certain disclosure requirements;
- A reduced degree of standardisation in the KID template;
- Provisions that would allow for supervisory authorities to grant exemptions or waivers from the requirements in duly justified cases.

**28. Do you think that the current degree of standardisation of the KID is detrimental to the proper understanding and comparison of certain types of PRIIPs? If so, which products are concerned?**

In principle, the high level of standardisation of KIDs is very positive for investors, as it allows them to easily compare different products. The more discretion manufacturers are given in calculating the data shown (SRI, performance scenarios or product costs) or their placement in the KID (order, graphical presentation), the less easily the customer can compare two products on the basis of the KIDs. In this respect, the concept of high standardisation should be adhered to and discretionary elements should be eliminated as far as possible when creating the KIDs.

However, one product group for which the classification as PRIIPs and the high standardisation of the KIDs cause problems is OTC derivatives. The background to this is that these are regularly not investment products and OTC derivatives are generally issued with a nominal value of €1 million or more. In their Q&As, the ESAs have already determined that the statutory requirements do not fit these products and have consequently made changes to the statutory content of the KIDs. In this regard, the ESAs have stated, inter alia, the following (ESAs: Questions and answers (Q&A) on the PRIIPs Key Information Document (KID), JC 2017 49, Derivatives, Q 5:

"Nonetheless, in view of the heterogeneity of PRIIP products, cases might occur where the verbatim use of the prescribed wording creates a risk that the retail investor will be misinformed about the characteristics of the product. It is recognised that this is the case for some of the specific prescribed texts when applied to swaps and similar OTC derivative products which do not require initial payments. In this specific case, it is considered appropriate to adjust the text....".

In our view, the scope of the PRIIPs Regulation should be limited to investment products; then the above-mentioned problems would not arise. Alternatively, the changes to the content of the KIDs for OTC derivatives made via Q&A should be directly transferred into the legal text, so that it is already clear from the law that different requirements apply to OTC derivatives.

**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?**

For the above-mentioned reasons, we do not consider this to be expedient, as greater differentiation would be at the expense of the comparability of the KIDs. OTC derivatives are an exception (see Q28).

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

For the above-mentioned reasons, we do not consider this to be expedient, as greater differentiation would be at the expense of the comparability of the KIDs. One exception is OTC derivatives, for which - unless they are excluded from the scope of application - separate requirements are necessary (see Q28).

## 3.7 Complexity and readability of the KID

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Taking into account the views previously expressed by some stakeholders that the information in the KID is overly complex and contributes towards an information overload for the retail investor, the ESAs would like to ask for suggestions on how the KID could be improved in this respect.

There can also be a link between this issue and the use of techniques such as layering as referred to above in the context of the digital KID (see Section 3.4), as well as other design techniques, such as the inclusion of visual icons or dashboards at the top of documents[1].

[1] Dashboards can include the most essential information at the top of the document. This is the approach taken, for example, for the PEPP KID - "PEPP at a glance" in Annex I of PEPP Delegated Regulation 2021 /473 point 4 and the template in part II.

**31. Would you suggest specific changes to Article 8 of the PRIIPs Regulation in order to improve the comprehensibility or readability of the KID?**

We are not aware of any problems with the layout and the order of the information in the PRIIPs KIDs, so we do not see any need for adjustment. The problems with the PRIIPs KIDs lie in individual contents and are based on errors in the legal requirements (in particular performance scenarios or discrepancies between the product costs shown in the KIDs and the product costs in the cost information according to MiFID II). To our knowledge, the Commission and the ESAs assume that the forward-looking performance scenarios are already anchored in the Level I requirements. In order to remedy the existing weaknesses in the presentation of performance, a change should therefore be made to the Level I requirements for the presentation of performance in order to be able to implement a meaningful methodology at Level II.

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

The problems lie less in the graphic design of the KIDs, but rather in the content (in particular performance scenarios or deviations from the reported product costs to the product costs in the cost information according to MiFID II).

In addition, it should be noted that the introduction of the elements would cause significant additional costs for the manufacturers, which would not be offset by any added value for investors. This also argues against further requirements.

## **3.8 Performance scenarios and past performance**

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

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

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

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

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

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

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

[3] JC 2020 66 (30 June 2020)

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

It can be helpful for investors if they know how the product has performed in the past. However, it must also be made clear to them that the past performance does not say anything about the future performance. In this respect, a historical approach gives rise to the same problems as the current scenarios which are calculated on the basis of the past performance. Furthermore, past performance scenarios cause further problems with regard to OTC derivatives and many certificates, as well as bonds, since they do not exist for these instruments. No approach should be chosen that is not suitable for a large number of PRIIPs.

**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?**

One of the main problems with current KIDs is that the performance scenarios give the impression that the product will generate the returns shown. This is because of the regulatory requirement that KIDs should contain forward-looking statements about performance, which can give customers the impression that these are the actual returns. On this issue, the ESAs have already stated the following in 2019:

"In the view of the ESAs the performance scenarios could, based on the recent economic environment, provide an overly positive outlook for potential future returns if they are taken to be best estimate forecasts. This relates, in particular, to where products have experienced positive returns over the previous five years that are above the long-term norm. It is important therefore that retail investors are made fully aware of the limitations of the figures provided in the performance scenarios. ..."

In addition, the ESAs have recommended the use of a supplementary note:

For the purpose of consistency, it is recommended that the following approach is taken, or a similar approach where adjustments to the proposed wording are necessary to reflect specific features of the PRIIP: To add under the heading of "Performance scenarios" within the section "What are the risks and what could I get in return", an additional warning that:

Market developments in the future cannot be accurately predicted. The scenarios shown are only an indication of some of the possible outcomes based on recent returns. Actual returns could be lower".

In our view, although the performance scenarios are improved under the new RTS, the problems are not entirely eliminated. This requires a different approach, which should be developed within the framework of the Retail Investor Strategy.

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

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In the ESA Consultation Paper of October 2019 on proposed amendments to the PRIIPs KID (JC 2019 63), the ESAs stated that their analysis of the implementation of the rules for MOPs indicated some significant

challenges regarding the clarity and usefulness of the information provided to retail investors. In particular, it was stated that (page 51):

*Where a generic KID is used (in accordance with Article 10(b) of the PRIIPs Delegated Regulation), it is difficult for the investor to identify the total costs related to a particular investment option. This arises because the generic KID shows a range of costs, but does not always identify which costs are specific to an investment option and which costs relate to the insurance contract. At the same time, it is understood that the information on the underlying investment option (in accordance with Article 14 of the PRIIPs Delegated Regulation), does not usually include the total costs of investing in that option. Therefore, it is often not possible for the investor to identify from the generic KID the costs that may apply in addition to those shown in the option-specific information.*

One of the proposals in the Consultation Paper was to introduce a differentiated treatment for the ‘most commonly selected investment options’ (page 52). In the final draft RTS following the consultation, the proposals relating to the most commonly selected investment options were not included taking into account various implementation challenges raised by respondents to the public consultation.

However, the ESAs introduced some specific changes to the approach for MOPs, for example to require the separate disclosure in certain cases of the costs of the insurance contract or wrapper. It was considered that these changes would result in material improvements to the current KID. At the same time, despite these proposed changes, there are still considered to be material issues that were not possible to address within the constraints of the review of the PRIIPs Delegated Regulation.

In the Final Report (JC 2020 66), the ESAs also stated at that stage that they consider the optimal way to address the challenges for MOPs is to use digital solutions, but that this would require changes to the PRIIPs Regulation.

As part of the May 2021 consultation from the Commission on the Retail Investment Strategy, feedback was also requested on the approach for MOPs to require a single, tailor-made KID, reflecting the preferred underlying investment options of each investor, to be provided.

In this context, the ESAs would like to ask for feedback on the following questions regarding potential alternative approaches for MOPs that might require a change of the PRIIPs Regulation:

**35. Would you be in favour of requiring a KID to be prepared for each investment option (in accordance with 10(a) of the PRIIPs Delegated Regulation) in all cases, i.e. for all products and for all investment options[1]? What issues or challenges might result from this approach?**

[1] This approach assumes complete investment in a single investment option and requires the KID to include all costs.

**36. Would you be in favour of requiring an approach involving a general product information document (along the lines of a generic KID) and a separate specific information document for each investment option, but which avoids the use of cost ranges, such as either:**

- A specific information document is provided on each investment option, which would include inter alia all the costs of the product, and a generic KID focusing more on the functioning of the product and which does not include inter alia specific information on costs?; or
- The costs of the insurance contract or wrapper would be provided in a generic KID (as a single figure) and the costs of the underlying investment option (as a single figure) would be provided in the specific information document?

What issues or challenges might result from these approaches?

37. Do you see benefits in an approach where KIDs are prepared for certain investment profiles or standard allocations between different investment options, or for the most commonly selected options? In this case, what type of information could be provided regarding other investment options?

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

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

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

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

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

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

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

We assume that even on the basis of the new RTS there will be divergent product costs under the PRIIPs Regulation and MiFID II, which will continue to cause major problems in practice.

Product costs are calculated differently under MiFID II and the PRIIPs regime. Among other things, this is the case with respect to inducements. While product costs under the PRIIPs Regulation have to include inducements, they would have to be part of the service costs under MiFID, so MiFID II product costs have to be disclosed without inducements (see ESMA: Q&A on MiFID II and MiFIR investor protection and intermediaries topics (ESMA35-43-349), section 9: Information on costs and charges, answer to question 7.). This means clients are being given different information about the product costs for one and the same product (if it is both a PRIIP and a financial instrument within the meaning of MiFID II), even if both information sheets base their calculations on the same investment amount of €10,000. In an example provided by a large German bank, the same product was shown to have product costs of €246.28 or 1.38% p.a. based on an investment of €10,000 when calculated under the PRIIPs Regulation, and product costs of €111.27 or 0.56% p.a. based on the same investment amount, but calculated in accordance with MiFID II. This discrepancy, which has to be explained to investors and which they find difficult to understand, results from a lack of consistency in the rules governing the calculation of costs.

As regards the relationship between the PRIIPs Regulation and its Delegated Regulation on the one hand and MiFID II on the other, one way of achieving greater consistency would be to abolish the presentation of costs in the KID if the product in question is a financial instrument within the meaning of MiFID II. This would avoid discrepancies while nevertheless informing the customer about costs according to the MiFID II requirements.

If this request is not followed, at least the specifications for calculating the product costs should be harmonised so that no contradictory figures are shown in the two documents.

### 3.11 Other issues

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

1. Performance Scenarios  
In addition to the above-mentioned points, we assume that the calculation methods for the performance scenarios - despite some improvements by the new RTS - will continue to lead to incomprehensible results. In our view, a completely new approach is required here, which should be developed as part of the Retail Investor Strategy. In our view, the what if approach is appropriate.

2. Discretionary elements  
In order to increase comparability, the existing discretionary elements (or those introduced by the new RTS) should be eliminated wherever possible.

3. KIDs for savings plans  
In addition, the provision in Article 13(4) PRIIPs Regulation on savings plans, which requires recurring KID provision during the term of the savings plan (i.e. long after the client's investment decision, which the KID is supposed to help the client with), should be abandoned. The implementation results in immense costs for savings plan providers without any discernible added value for customers.

In this regard the European Parliament has also demanded to delete or modify the requirement in Art. 13 (4) („the concept of ‘successive transactions’”). The European Parliament has raised several important issues

and concluded with the following demand (European Parliament legislative resolution of 23 November 2021 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and Non UCITS (COM(2021)0397 – C9-0326/2021 – 2021/0215(COD)):

“Those concerns need to be urgently addressed in order to improve retail investors' trust in financial markets, both for the benefit of companies looking for funding and for the long-term benefit of investors. The need for a broader review was already set out in Regulation (EU) No 1286/2014, and its urgency remains unchanged. On the basis of such a review in accordance with Regulation (EU) No 1286/2014, the Commission is expected to submit, as a matter of urgency, a report to the European Parliament and to the Council accompanied, if appropriate, by a proposal to address the existing limitations.”

This is in line with the view of the ESAs that have declared that the provision in Art. 13 (4) needs to be modified (ESAs: Final Report following consultation on draft regulatory technical standards to amend the PRIIPs KID Concerning amendments to Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs), JC 2020 66, p. 43, 44).

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