

BVI¹ response to ESAs Call for evidence on the European Commission mandate regarding the PRIIPs Regulation

1. General Information

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

- Confidential
 Public

Stakeholder

BVI

Sector

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

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*

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 117 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.



- *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)*

Question 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.

As providers of retail investment funds, BVI members will be directly affected by the PRIIPs regime from 2023 on. Already today they are supplying insurance companies with PRIIPs compliant information on retail funds that are offered as investment options in multi-option products.

Therefore, while on the one hand we have always supported a comprehensive review of the PRIIPs framework in order to rectify some deficiencies of the Level 1 texts, we must admit that the **timing of the current EU initiative is quite problematic**. Fund managers are facing the situation that they might be required to introduce PRIIPs KIDs for their funds based on the amended RTS by 1 January 2023 only to be subject to further changes shortly thereafter. Moreover, it is regrettable that the first practical experiences with the PRIIPs KIDs for UCITS and retail AIFs will not be taken into account in the development of the EU retail investment strategy.

This being said, **we urge the ESAs to focus their recommendations for the Level 1 PRIIPs review on truly essential issues that still inhibit adequate and clearly comprehensible investor information**, in particular:

- **appropriate differentiation between types of PRIIPs regarding performance-related information**, including provision of past performance as the only relevant information for linearly performing products, and
- **full alignment of product-related cost information** between PRIIPs and MiFID II for investments issued as financial instruments on the one hand and PRIIPs and IDD for products in the form of insurance contracts on the other.

Any modifications going beyond such targeted amendments and involving more fundamental system changes, such as technical layering of the KID information, should be thoroughly discussed with the stakeholders and over and above subjected to rigorous consumer testing. In view of the significant resources to be mobilised by fund managers for the implementation of PRIIPs KIDs in 2022, such system changes should be recommended only in case they are demonstrably associated with significant benefits for investor information.

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:

Question 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?

According to Morningstar statistics, there are currently some 137,000 retail share classes offered in the EU market, of which 68,000 are distributed in Germany. Currently all German retail funds provide UCITS or UCITS-like KIIDs to investors. From 1 January 2023 these documents will be sweepingly replaced by PRIIPs KIDs. In addition, there are many “Spezialfonds” in the German market that are AIFs offered to institutional investors only. Some of those investors have retail investor status under MiFID II/AIFMD and therefore will also need to be provided with PRIIPs KIDs before purchasing fund shares.

Question 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?

N/A

Question 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?

N/A

Question 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?

N/A

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

The KID represents a legal document that shall provide investors with the key information about an investment product needed for taking an informed investment decision. As such, it cannot be compared with marketing materials prepared for the distribution of PRIIPs. The decisive difference is that marketing materials do not need to live up to the expectation of covering all essential product features. Of course, any marketing material prepared for PRIIPs must be fully consistent with the PRIIPs KID in accordance with Art. 10 PRIIPs Regulation, but does not need to be as comprehensive or complete. Therefore, it can be used to explain in an intuitive and simplified manner some key characteristics that are deemed particularly relevant to investors.

The usability of PRIIPs KIDs for marketing purposes is particularly hampered by the following:



- **too high complexity**, e.g. with regard to performance information (four performance scenarios for up to three time periods generally deter investors)
- **too lengthy narratives** that are not sufficiently tailored to a specific product and inhibit easy comparisons
- **too formalistic language**, lack of plain, easy-to-understand explanations or graphics

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:

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

Based on Article 1 second subparagraph (b) of PRIIPs Delegated Regulation, we must assume that all retail AIFs will need to include a comprehension alert due to their classification as complex products under MiFID II. In the German market, this will pertain in particular to open-ended real estate funds that are very popular with retail investors, but also to those AIFs that are structured as “Spezialfonds” and offered to institutional investors with a retail client status. In both cases, inclusion of a comprehension alert is not at all justified. In particular, open-ended real estate funds offer rather straightforward opportunities to participate in the price development of the real estate market by investing in mostly commercial properties in the EU and worldwide. The only product feature that requires specific attention by investors is the existence of minimum holding and termination periods for redeeming funds units. This feature is however specifically highlighted by the liquidity risk warning that needs to be provided in the context of the SRI presentation.

Therefore, we request the ESAs to reconsider the appropriateness of linking application of the comprehension alert to the understanding of complex products under MiFID II. The scope of the comprehension alert for PRIIPs should be more closely aligned with the criteria specified in recital 18 PRIIPs Regulation that bear no resemblance with the complex product definition.

Question 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?

As explained above, our understanding is that the PRIIPs comprehension alert will pertain to all retail AIFs as well as to German “Spezialfonds” that are also offered to institutional investors with a retail client status. There are currently 460 retail AIFs (share class level) with managed assets of EUR 165 bn that are launched and distributed in Germany. Among these, retail open-ended real estate funds are most popular and account for more than EUR 122 bn of assets under management.

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



N/A

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

N/A

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

N/A

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.

<p>Our members will implement the PRIIPs Regulation in 2022 in order to provide PRIIPs KIDs for their funds from 1 January 2023 on. So far, they have no sufficient experience in order to specify all relevant cost components. However, we assume that significant costs will be incurred for the purchase of market data needed for transaction cost calculations under the “arrival price” methodology. Similarly, licencing costs will apply in case the historical price data of a fund need to be concatenated or substituted by benchmark data for performance scenario calculations. These costs will not be limited to the implementation phase, but will apply also during running mode of the PRIIPs KIDs.</p>
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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.

Our members will implement the PRIIPs Regulation in 2022 in order to provide PRIIPs KIDs for their funds from 1 January 2023 on. So far, they have no sufficient experience in order to provide reliable cost estimates.

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?

Our members will implement the PRIIPs Regulation in 2022 in order to provide PRIIPs KIDs for their funds from 1 January 2023 on. So far, they have no sufficient experience in order to provide reliable cost estimates.

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

We are not aware of significant inconsistencies in the application of the PRIIPs Regulation across the EU. Nonetheless, major divergences can be observed with regard to specific issues of PRIIPs implementation among market participants in national markets. In Germany this pertains specifically to the **details of ongoing cost calculations for real estate funds**. Real estate funds are very popular with retail investors in Germany. Open-ended real estate funds currently account for more than EUR 122 bn of assets under management, with additional EUR 2.9 bn invested in closed-ended funds. In the last five years, these vehicles have attracted new investments of more than EUR 36 bn (source: BVI statistics as of October 2021).

Currently, it is fully unclear whether the following elements need to be accounted for in the cost calculations:

- Operating and maintenance costs of individual properties held in the portfolio, given that such costs do not specifically relate to the management of the product, but are incurred at the asset level and hence are comparable with the operating costs of target companies,
- Interest payments for debt financing of property assets, since such payments are inherent to any economically viable real estate investments and serve the purpose of maximising investor returns over the long term.

The decision whether or not to include these expenses in the ongoing cost figure has **significant impact on the level of costs disclosed to investors** and therefore represents an **important competition factor at the point of sale**. Persisting inconsistencies in the cost disclosures among real-estate funds that are solely due to a different understanding of regulatory requirements are therefore truly **detrimental to effective investors protection**.

The BVI together with the German Property Federation ZIA has alerted the ESAs to these inconsistencies first in 2017 and then once again in 2018, and requested EU-wide clarification by way



of Q&As. With the pending implementation of the PRIIPs KIDs for all retail funds by January 2023, it is of **utmost importance that the remaining open questions be clarified as soon as possible.**

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.

[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)

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

Question 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?

N/A

Question 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?

There is a clear shift in the preferences of retail investors to the accessibility and provision of KI(I)Ds in an electronic format. In general, new client relationships are accompanied by the opening of an



electronic mailbox as the primary communication channel. Therefore, we are strongly in favour of aligning **the PRIIPs regime with the recent “MiFID quick fix” which establishes the principle of electronic disclosure by default** while allowing investors to request provision of information on paper.

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

N/A

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

From the viewpoint of product distributors and financial advisors, the current shift to the accessibility and provision of KI(I)Ds in an electronic format is more than welcome. Product distributors are committed to recommending electronic communication channels wherever possible and appropriate regarding the specific circumstances of clients. Nonetheless, many clients still cannot be reached via electronic mail which poses a significant problem with regard to the pending application of Article 13 (4) PRIIPs Regulation to the huge number of existing fund saving plans in Germany (cf. our response to Q40 below).

In the past, there has been no reason to provide an electronic mail address when concluding a savings plan (since the KIID for UCITS and other retail funds only needs to be provided once under the current rules). That is why distributors cannot reach many clients via electronic mail. 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 means that whenever there is a relevant change in the KID, holders of more than 3.5 million saving plans would need to be informed by traditional mail if a more flexible approach is not allowed. This is not only operationally burdensome, but involves high costs that might even jeopardise the economic viability of the saving plan offerings given that the regular saving amounts are generally low (ranging between EUR 50 and 100 per month). Moreover, regular paper-based investor communication is clearly counterproductive to the efforts to establish more sustainable business operations and to reduce CO2 emissions.

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.**

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

We strongly support an **alignment of the PRIIPs regime with the recent “MiFID quick fix” which establishes the principle of electronic disclosure by default** while allowing investors to request provision of information on paper. This guiding principle should be extended to all disclosure requirements incumbent upon distributors of retail investment products in order to facilitate pre-contractual disclosure of documents in electronic format as the default solution.

In order to respond to the increased demand by investors for interactive digital formats, a layered provision of PRIIPs KID information should also be discussed. However, a full transformation of the PRIIPs KID to an interactive format requires due consideration of the relevant consequences. In particular, it needs to be discussed whether a future digital PRIIPs KID should still be a coherent legal document or rather a technical application solution in order to be compatible with the needs of a new generation of investors. Further in-depth discussions are also needed in order to identify primary and secondary disclosure points that would tackle the current information overload for retail investors while avoiding abusive use of layering.

Question 19. Do you think it would be appropriate to apply the approach taken in the PEPP Regulation 2019/1238 (highlighted above) to the PRIIPs KID?

We are open to discussing adaptations to the PRIIPs KID regime in order to increase its usability in the digital environment. As stated in our reply to Q18 above, especially the layering of information allowed under the PEPP Regulation could prove more appealing to retail investors by providing access to shorter, more condensed information in the first layer. However, more detailed discussions are needed to ensure that such layering fits into the overall concept of the KID as a legal information document and that consistency of information is ensured for both digital and paper-format disclosures.

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.



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

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:

Question 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 in favour of extending the PRIIPs regime to occupational pension schemes or individual pension products** referred to in Article 2 (2) (d) to (g) PRIIPs Regulation. There is a wide variety of investment solutions across Europe that have the primary purpose of providing investors with an income in retirement. In most cases, the decisive features of such products depend on national tax benefits and on other types of state allowances that do not reasonably fit into the PRIIPs KID. As regards occupational pension schemes, these are often provided directly by employers e.g. in form of direct commitments to pay certain pension benefits upon retirement. In many cases the contractual relationship exists only between the employer and the fund manager with the employees being only beneficiaries of the contract. Fund managers are generally being selected by employers based on a sophisticated tender process and details of the investment strategy as well as other product features are subject to bilateral negotiations. It should be clear that occupational pension commitments cannot be appropriately compared with retail investment products such as certificates, funds or and thus, should not be pressed into one standardised key information document.

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

We clearly see the need to adapt the future reference to the PRIIPs Regulation under the UCITS Directive in order to abolish the requirement to provide PRIIPs KIDs to professional investors in UCITS.

The legislative solution adopted as part of the PRIIPs quick-fix in Article 81a UCITS Directive builds upon the current UCITS requirements and basically declares a PRIIPs KID equivalent to the UCITS KIID when it comes to fulfilling the respective duties under the UCITS Directive. The undesirable consequence of this approach is, however, that PRIIPs KIDs will need to be provided to all investors in UCITS, regardless of their status as retail or professional. Effectively, therefore, **UCITS will be the only category of PRIIPs that will be obliged to provide PRIIPs KIDs to professional investors.**

There is a broad consensus among the industry that professional investors neither need nor are interested in the short and simplistic information comprised in the PRIIPs KIDs. They generally seek direct contact to the fund manager in order to obtain information that is tailored to their specific needs. Therefore, the obligation to provide PRIIPs KIDs under Article 5 (1) PRIIPs Regulation is rightly confined to the relationships with retail clients. This valuation should apply to all PRIIPs and the specific rules under the UCITS Directive that extend PRIIPs information duties to professional investors should be abolished.

Question 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.



While not perceiving any deficiencies in terms of product definition, we would suggest to specify the conditions under which products are made available to retail investors given that this factor is also of major relevance for the provision of the PRIIPs KID under Art. 5 (1) PRIIPs Regulation. For further details, cf. our reply to Q26 below.

Question 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?

N/A

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

N/A

Question 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

N/A

Question 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?

Currently we do not see the need for regulatory changes in this regard.

Question 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?

No, we do not support this idea. Development of a “taxonomy of PRIIPs” would be far too complex and would run the risk of introducing yet another set of product-related definitions that would certainly not be fully aligned with the existing product classifications under national law. For instance, in Germany there is already one set of rules defining categories of investment funds under investment law (Kapitalanlagegesetzbuch) and another set of rules applicable for tax law purposes (Investmentsteuergesetz). The definitions are already in parts inconsistent which is causing many difficulties in practice. Given that a standardised classification of PRIIPs would not be able to account for all national specificities, but on the other hand, would not overrule either the investment law or the tax law definitions, we see definitely more risks than benefits in such a project. Appropriate distinctions between different types of PRIIPs should refer to the relevant product features that justify such

distinctions and do not necessitate the introduction of a new product typology (cf. also our reply to Q30).

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.*

Question 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?

Indeed, we believe that the **current degree of standardisation of the PRIIPs KID that enforces comparability of information for all PRIIPs is not suitable to ensure adequate product information in every case.**

For investment funds, the following two subjects are critical:

- **Performance information:** The discussion about appropriate performance scenarios for investment funds continues since the inception of the PRIIPs idea. After many rounds of debates involving different possible approaches, we must come to the conclusion that performance scenarios are not the right way forward for informing investors about the performance prospects of linearly performing funds that are dependent on the performance of their portfolio assets. Therefore, we insist on our long-standing demand (which is shared by investor representatives) that past performance should be the only performance indicator for linear products in line with the current UCITS KIID framework.
- **Presentation of costs as monetary amounts:** The PRIIPs Regulation requires presentation of total aggregated costs based on several assumptions in particular with regard to the investment amount and the annual performance. Especially the latter causes significant problems for illustration of cost components that are triggered by the annual yield like performance-related fees. Under the new RTS, for instance, it is foreseen 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 example shows that a standardised approach to cost disclosures in any circumstances is not appropriate for the purpose of meaningful investors information. Given their dependence on the actual performance level, performance-related fees should not be accumulated with other cost elements, but shown separately on the basis of the recently generated fees from the past in accordance with the current UCITS KIID standard.

These examples illustrate very well that comparability of PRIIPs disclosures must be always considered secondary to the primary purpose of the PRIIPs KID which should be ensuring meaningful key investor information and enabling (self)-informed investment decisions.

Question 29. Do you think that greater differentiation based on the approaches highlighted above, is needed within the PRIIPs Regulation? If so what type of approach would you favour or do you have alternative suggestions?

We see the following need for differentiation with regard to the information concerning investment funds (for more details, cf. the deficiencies identified above):

- **Past performance:** We insist on our long-standing demand (which is shared by investor representatives) that past performance should be the only performance indicator for linear products in line with the current UCITS KIID framework. A switch to past performance as a stand-alone approach to performance information should be allowed for investment funds (UCITS and AIFs alike) and any other type of PRIIPs that reflect the performance of the underlying assets in a linear manner.
- **Presentation of performance-dependent cost components:** Given their dependence on the level of actually accrued yields, performance-related fees should not be accumulated with other cost elements, but shown separately on the basis of the recent generated fees from the past in accordance with the UCITS KIID standard.

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

It is difficult to make a proposal for a general distinction of the PRIIPs requirements based on the product type. Rather, we believe that applicability/non-applicability of certain provisions should depend on relevant features of the product. In line with the above, we could envisage the following distinction for presentation of certain PRIIP elements:

- Linear versus non-linear performance structure for the presentation of performance information,
- Regular premium/regular payments versus lump sum investment for the calculation of performance figures,
- Disaggregation of cost elements like performance fees or carried interest that fully depend on the level of actual performance.

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.

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

The current Article 8 PRIIPs Regulation is too prescriptive and does not allow product manufacturers to present the key information in a way that highlights the decisive features of a PRIIPs. More flexibility is needed as regards the overall presentation in order to account for the specificities of different products. For example, the section "What happens if the PRIIPs manufacturer is unable to pay?" is not relevant for investment funds, but still needs to be included in the KID and hence distracts investors from the truly essential information.

In terms of content, we are aware that Article 8 does not include any standards for the provision of ESG-related information on PRIIPs. However, given the comprehensive ESG disclosures that will be required for most financial products under SFDR, we urge the ESAs to abstain from introducing yet another set of rules for ESG disclosures in the PRIIPs KIDs. Instead, products that qualify for Article 8 or 9 under SFDR should provide for a general description of the ESG investment strategy in the "What is this product?" section and in addition, include a hyperlink to the standardised annex to pre-contractual documents (e.g. to the sales prospectus in case of investment funds) that encompasses all information on ESG objectives and/or characteristics relevant for reaching informed investment decisions.

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

It would definitely be helpful to include more graphical elements in the KID. The proposed disclosure of past performance for linearly performing PRIIPs (cf. our reply to Q33 and 34) should take the form of a bar chart in line with the current standards for UCITS KIIDs.

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.

[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)

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

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

Question 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". However, this proposal does not fix the fundamental flaw that projecting a product's past performance into the future provides misleading information. Without making fundamental changes to the way performance is disclosed there is a clear risk that adding past performance to the existing scenarios (i.e. the information the former are based on) will even reinforce the message being portrayed in the future scenarios. This approach would basically upend the long-standing practice of warning investors that past performance should not be seen as an indication of the future. Moreover, adding information on past performance to the currently required performance scenarios would be simply not feasible due to the 3-pages-length-limitation for the PRIIPs KID prescribed in Article 6(4) of the PRIIPs Regulation.

Therefore, we insist on our long-standing demand that past performance should be the only performance indicator for linear products and should be accompanied by appropriate warnings and explanations in line with the current UCITS KIID framework.

Question 34. Would you suggest changes to the requirement in Article 8(3)(d)(iii) of the PRIIPs Regulation concerning the information on potential future performance, and if so what would you specifically change in the Regulation?

We suggest adapting the wording of Article 8(3)(d)(iii) of the current PRIIPs Regulation in order to eliminate doubts that presentation of past performance can be considered appropriate for PRIIPs KID purposes as an alternative, not merely an addition, to performance scenarios depending on the features of specific products. Such adaptation could be effectuated by accounting for the modifications in bold below:

(iii) appropriate performance **information including, where appropriate, past performance or performance scenarios, and the assumptions made to produce the latter,**

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:

Question 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.

N/A



Question 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?

N/A

Question 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?

N/A

Question 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?

N/A

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

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

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

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

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

Question 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?

Consistent cost disclosures throughout different pieces of EU investor protection framework, in particular PRIIPs, MiFID II and IDD, are crucial for useful information of investors. **In an ideal case, the PRIIPs KID should provide the relevant information on product costs to be applied by distributors for the purpose of proving aggregated product-level and distribution-level cost disclosures at the point of sale.** The new PRIIPs RTS have made significant progress in this regard by providing for separate disclosures of cost elements based on a one year holding period and a net zero performance in the table “composition of costs”. Nonetheless, some important drawbacks still remain:

- **Presentation of performance fees:** We understand that most funds might be required to show a performance fee of 0% in the “composition of costs” table given that all cost components need to be presented assuming a net zero annual return. 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. Given that there is no short-term satisfactory solution to this problem, we advocate for excluding performance fees from the aggregated cost disclosures (cf. our reply to Q28 and Q29 above).
- **Calculation of transaction costs:** Even though the new RTS significantly reduce the impact of market movement on the results of transaction cost calculations, it is clear that especially for investments in less liquid equities e.g. emerging market small-caps the potential for significant time-lag between order transmission and the last available mid-market price will still remain. Given that the MiFID II provisions do not account for market movements as elements of cost calculations, situations might still arise where the results of PRIIPs transaction cost calculations will be considered inappropriate for MiFID II purposes.

3.11 Other issues

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

We would like to raise ESAs’ attention to the following two problems that arise specifically for investment funds under the current PRIIPs framework:

1. **There is an urgent need to amend the current requirements for provision of PRIIPs 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 Germany savings plans on funds are very popular. For instance, among the clients of German mutual and savings banks, there are some 4.5 million savings plans that are regularly being invested; the number of saving plans in the cooperative banking sector is



even higher with nearly 6 million. Most of these contracts are 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 cause high costs. Given that the regular saving amount are generally low (and typically range between EUR 50 and 100 per month), 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.**

2. The future reference to the PRIIPs Regulation under Art. 81a UCITS Directive should be adapted in order to abolish the requirement to provide PRIIPs KIDs to professional investors in UCITS.

The legislative solution introduced as part of the PRIIPs quick-fix in Article 81a UCITS Directive builds upon the current UCITS requirements and basically declares a PRIIPs KID equivalent to the UCITS KIID when it comes to fulfilling the respective duties under the UCITS Directive. The undesirable consequence of this approach is, however, that PRIIPs KIDs will need to be provided to all investors in UCITS, regardless of their status as retail or professional. Effectively, therefore, **UCITS will be the only category of PRIIPs that will be obliged to provide PRIIPs KIDs to professional investors.**

There is a broad consensus among the industry that professional investors neither need nor are interested in the short and simplistic information comprised in the PRIIPs KIDs. They generally seek direct contact to the fund manager in order to obtain information that is tailored to their specific needs. Therefore, the obligation to provide PRIIPs KIDs under Article 5 (1) PRIIPs Regulation is rightly confined to the relationships with retail clients. This valuation should apply to all PRIIPs and the specific rules under the UCITS Directive that extend PRIIPs information duties to professional investors should be abolished.