



Frankfurt am Main,  
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## BVI's response to the ESA's consultation on EOS PRIIPs

### General Comments

It is decisive that the rules for EOS PRIIPs ensure meaningful transparency for investors without curtailing the growth of responsible investments (RI). BVI<sup>1</sup> therefore gladly takes the opportunity to present its views on the ESAs' proposal with the following key elements:

- We agree that requirements for EOS PRIIPs should not follow a normative labelling approach since there is no common understanding or definition of environmental and social investments.
- While ESG integration may form part of a formal investment strategy at a product level, asset managers also often **use ESG integration for the mainstream business as risk management or long-term value creation tool**. We believe it is in the interest of policy makers, investors as well as the financial industry that asset managers can continue to apply this form of ESG integration and disclose it without running the risk that also all of their non-sustainable products are considered as EOS PRIIPs (see below our comments to Q1). This would be counterproductive and would have a negative impact on the growth of RI. In this regard, we are in particular concerned about the ESAs' statement regarding disclosure "in other than the KID or marketing information statements" (p. 20, paragraph no. 2, see below).
- Rules on EOS PRIIPs **should not require manufactures to apply an impact investment strategy** but should recognise all generally accepted RI strategies as strategies for EOS products if those are part of the formal investment strategy. In this respect, we particularly are concerned that technical advice 3 could be understood as a requirement for impact investing (see below our comments to Technical Advice 3).
- Furthermore, we are also concerned that the ESAs use EOS PRIIPs in order to **apply the manufacturers product governance rules to management companies although these are exempt from MiFID** and are outside the IDD's scope. Furthermore, we believe that the ESAs have not taken into account all rules under UCITS and AIFM Directives which provide similar arrangements as the product governance rules under MiFID and IDD even if they are described and labeled differently.
- Lastly, we like to ask the ESAs to analyse the possibility to adjust the terminology in the technical advice to established terminology such as ESG and RI. Although the PRIIPs Regulation refers to environmental and social objectives, we believe that these are interlinked with the governance of investee companies. Existing terms as ESG and RI are not yet clear enough, a new term as EOS PRIIPs would in our view rather facilitate misperceptions.

<sup>1</sup> BVI represents the interests of the German investment fund and asset management industry. Its 98 members manage assets of some EUR 2.8 trillion in UCITS, AIFs and discretionary mandates. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the investments for 50 million private clients in over 21 million households. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit [www.bvi.de/en](http://www.bvi.de/en).



*Question 1: Do you see the need for additional policy requirements consistent with the mandate, going beyond what is suggested in Section 4?*

The most important point regarding the Technical Advice is the scope of the EOS PRIIPs framework. The legislator had the intention to provide retail investors pursuing social or environmental goals along with financial returns on their investment with comparable information (see recital 19). In other words, the idea was to consider sustainable products. This should, however, be clearly distinct from an integration of ESG factors alongside the mainstream analysis of investments in order to properly identify ESG risks and identify opportunities also with a focus on the long-term value of investments. **It is decisive, that the PRIIPs requirements apply to all sustainable products, however, they should in no case apply if the asset manager decides to generally consider ESG criteria alongside the financial analysis of investments.** Otherwise, we see a significant risk that the current growth of RI will be threatened. As the ESAs point out, in recent years responsible investments have grown substantially in Europe. While we believe that policy makers generally and the rules on EOS PRIIPs particularly can facilitate this development, the means of doing so should be selected cautiously. In particular, any mandatory requirements will shift the question of ESG integration from a developing approach to a mere question of compliance which would have an effect of retrogression.

Furthermore, investors are interested in the information of asset managers integrating ESG analysis alongside the mainstream analysis of investments. Consequently, asset managers should also be allowed to be transparent without risking having to be compliant with the EOS PRIIPs requirements. The rule that a manufacturer who sets out in disclosure other than the KID or marketing information statements on social or environmental objectives has to comply with EOS PRIIPs requirement (see paragraph 2 on page 20) is not clear. First, there is no definition of marketing information statements, which causes uncertainty in which documents a statement would be allowed without application of the EOS PRIIPs rules. Secondly, the specification “where the manufacturer sets out in disclosure (...) on social and/or environmental investment objectives” is quite broad. Hence, it is unclear which kind of statements would be covered, for instance whether a statement that the asset manager integrates environmental and social governance factors alongside its mainstream analysis could already be considered as such disclosure. Consequently, we suggest clarifying this analysis as follows:

“Where the manufacturer ~~commits itself sets out~~ in ~~disclosures other than the KID or legally required marketing~~ information ~~statements to apply an investment strategy~~ on social and/or environmental investment objectives, corresponding elements in the PRIIPs KID section ‘What is this product’ are mandatory according to Article 8, para 3 (ii) of the PRIIPs Regulation.”

*Question 2: What are in your view the constraints of the measures proposed in the technical advice with respect to effective governance and supervision?*

We do not see specific constraints, however, we believe that the approach should be more in line with the Commission’s request and the text of the PRIIPs Regulation and should be based on a thorough GAP Analysis regarding sectoral legislation (see below comment regarding Technical Advice 2).

*Question 3: Do you deem the principle-based approach in Section 4 for addressing EOS specific product governance and oversight requirements for PRIIPs appropriate?*

We agree with the principle-based approach, however, we are very concerned about the ESAs’ approach and understanding regarding the product governance rules (see below comment regarding Technical Advice 2).



*Question 4: Do you have any suggestions beyond the measures outlined here?*

No, we do not think that further measures would facilitate the growth of RI.

**Technical Advice 1: Key Information Document and Investment Policy Statement**

*There is a mutual/close relationship between the EOS objectives stated in the KID of a PRIIP and the investment objectives as set out in an investment policy statement (IPS). The IPS shall however contain a more granular and specific description of the investment process than what is currently envisaged under the 'What is this product?' section in the KID.*

The ESAs introduce a new disclosure requirement with the IPS. Although retail investment funds generally describe their investment objectives in the prospectus and the KIID, we believe that a new disclosure requirement outside the PRIIPs KID is not in line with the PRIIPs Regulation. This allows only specifying details of procedures used to establish whether a PRIIP targets environmental or social objectives (see Art. 9 para. 4) and does not provide a mandate to impose further disclosure requirements beyond the PRIIPs KID. Furthermore, this is not in line with the Commission's request for advice which only requires the IPS in case sectoral legislation is found insufficient.

**Technical Advice 2: Application of Product Governance Rules**

*All manufacturers of EOS PRIIPs shall comply with the MiFID II or IDD product governance rules, depending on the product being a financial instrument, structured deposit or an insurance-based investment product.*

We are very concerned that the ESAs use EOS PRIIPs in order to apply the manufacturers' product governance rules to manufacturers that are exempt from MiFID and are outside the IDD's scope. To require for instance investment management companies to comply with the product governance rules in MiFID II requires a change of legislation. The ESAs' proposal goes beyond the PRIIPs Regulation as well as the Commission's mandate. In its request for advice the Commission has asked the ESAs to consider the sectoral legislation in order to identify any shortcomings. **Only in case sectoral legislation is found to be insufficient**, the Commission proposes to introduce

- the policy statement,
- the development of the investment strategy which carries the policy statement into practice and
- processes that ensure proper implementation.

However, the ESAs now propose to apply all MiFID II and IDD product governance rules **in addition to** the establishment of an IPS, its translation into the (allocation of) assets and controls of its proper implementation.

Furthermore, the ESAs' GAP analysis of the existing sectoral legislation is not sufficient and should be amended for the following reasons:

- The PRIIPs Regulation already requires the PRIIPs manufacturer to provide information on the type of retail investor to whom the PRIIP is intended to be marketed. The draft implementing regulatory standards align this requirement with the target market in MiFID II (see Art. 2 para. 3 of the draft Implementing Regulation). Accordingly, the fact that no target market definition is required according to UCITS and AIFM Directives cannot be relevant for the GAP Analysis because a target market will have to be defined for all PRIIPs.
- The ESAs have picked some of the product governance rules within the MiFID II and have left out others.
- The ESAs have not taken into account all rules under the UCITS and AIFM regime. UCITS and AIFM regimes provide similar arrangements as the product governance rules under MiFID and IDD though they are described and labeled differently. The following table shows the rules which the ESAs should at least have taken into account:



|   | MiFID II  | AIFMD   | UCITS Directive  |
|---|---|---|--|
| Responsibility for internal governance: Management body         | Art. 9(3)(b)  | E.g. Art. 60 of the AIFM Regulation No. 231/2013<br>Responsibility of senior management and, where appropriate, the supervisory function, for the management company's compliance with its obligations, including:<br>- Responsibility for the implementation of the general investment policy<br><br>- oversees the approval of investment strategies for each managed AIF | Art. 9 of the UCITS Implementing Directive 2010/43<br>Responsibility of senior management and, where appropriate, the supervisory function, for the management company's compliance with its obligations, including:<br>- Responsibility for the implementation of the general investment policy<br><br>- oversees the approval of investment strategies for each managed UCITS                              |
| Establishment of a policy/ process for the approval of products | Art. 16(3) MiFID II, Art. 9 Delegated Directive.<br><br>These comprise: | Art. 60 AIFM-Regulation requires managements' oversight of an approval for investment strategies.<br><br>In addition, the following rules inter alia mirror requirements according to the MiFID II Delegated Directive:   | Art. 9 UCITS Implementing Directive requires managements' oversight of an approval for investment strategies. Furthermore, UCITS-Directive provides for a product regulation with a view on investor protection and requires each UCITS to be authorised by its NCA (Art. 5 UCITS-Directive). In addition, the following rules inter alia mirror requirements according to the MiFID II Delegated Directive: |
|   | Conflicts of interest   | Art. 14 AIFMD, Art. 30 et seq. AIFM Regulation  | Art. 17 et seq. of the UCITS Implementing Directive  |
|   | No adverse effect for clients   | Acting in investors best interest (Art. 17 AIFM Regulation)   | Acting in investors best interest (Art. 20 UCITS Implementing Directive)   |
|   | Consider threat to function or stability of financial markets           | Art. 17 AIFM Regulation   | E.g. Art. 22 para. 2 UCITS Implementing Directive  |
|   | Competent staff   | Art. 22(1) AIFM Regulation  | Art. 5(1) and Art. 23(2) UCITS Implementing Directive  |
|   | Oversight management body   | Art. 60 AIFM Regulation   | Art. 9 UCITS Implementing Directive  |
|   | Compliance function   | Art. 61 AIFM Regulation   | Art. 9(2)(c) UCITS Implementing Directive  |
|   | Scenario analysis   | Art. 45 AIFM Regulation   | Art. 40(2) UCITS Implementing Directive  |



|                                     | MiFID II   | AIFMD                               | UCITS Directive  |
|-------------------------------------|--|-------------------------------------|--|
|                                     | Charging structure   | Art. 17 (2) AIFM Regulation         | Art. 22(4) UCITS Implementing Directive                    |
|                                     | Material events  | Risk management, e.g. Art. 15 AIFMD | Risk management, e.g. Art. 12 UCITS Implementing Directive |
| Identification of the target market | PRIIPs Regulation already requires identification of targeted retail investor. |                                     |  |

Furthermore, both UCITS and AIFM Directive have monitoring elements which also include the requirement to appoint a depositary for each fund that carries inter alia out the task of monitoring whether a fund adheres to the fund rules and investment limits. Accordingly, the GAP analysis would have to be amended and the requirement for at least management companies, being subject to sectoral legislation, to comply with the MiFID rules on product governance should be removed.

#### **Technical Advice 3: Adherence to Investment Objectives**

*All PRIIP manufacturers that claim to pursue environmental or social (EOS) objectives shall establish, implement and maintain, in a way that is appropriate and proportionate, product governance procedures to ensure that the stated non-financial investment objectives are adhered to during the lifetime of the EOS PRIIP.*

*All PRIIP manufactures shall ensure that the money invested via the PRIIP are effectively and predominantly employed for the achievement of the stated EOS objectives. None of the funds underlying the EOS PRIIP must undermine the stated EOS objectives.*

**Technical Advice 3 is decisive for the definition of what constitutes an EOS PRIIPs.** Although the ESAs recognise the different responsible investment strategies and specifically claim that the regulatory measures set out in the technical advice in section 4 reflect this diversity of possible EOS PRIIPs, the proposed technical advice does not. In particular the requirement to employ the money invested for the achievement of the stated EOS objectives indicates that the investment objective has to be the achievement of an impact. While all RI strategies may achieve an impact over time, **the only strategy really targeting such impact is Impact Investing. It is crucial that the ESAs clarify whether all RI strategies described in the consultation in line with Eurosif research will be recognised as strategies for EOS PRIIPs.** This decision will define the future of EOS PRIIPs. Although Impact Investing is the fastest growing RI strategy according to Eurosif research, in terms of assets it is still the smallest strategy. RI strategies other than Impact Investing usually do not allow for any measurable achievement of EOS objectives. Accordingly, we suggest that the ESAs delete the second and the third sentence. Should the ESAs consider all RI strategies described in the consultation as strategies for EOS PRIIPs, the requirement in the first sentence of the Technical Advice 3 should be sufficient. This requirement, however, should not prevent investment fund manufactures from adjusting an investment strategy during the lifetime.

#### **Technical Advice 4: Establishment of an Investment Policy Statement**

*Manufacturers of EOS PRIIPs shall establish, as part of the manufacturing process, an investment policy statement (IPS), specifying in detail the scope of the EOS objectives that are being targeted as well as the constraints. The IPS shall ensure transparency and credibility of the S&E objectives set by the manufacturer. It shall enable retail investors to match their desired EOS objectives with the investment strategy of the PRIIP on offer. The IPS shall explain in detail to retail investors, by using language that is understandable and clear, what exact impact is aimed at by the investment and why a just and equitable person would regard this as an environmental or social objective. Furthermore the IPS shall explain the investment strategy and, where applicable, its translation into the (allocation of) assets behind*



*the EOS PRIIP. This IPS may take into account certain elements set out in industry initiatives' transparency codes.*

As already described (see above the comment to Technical Advice 1), we are concerned about the introduction of a new disclosure requirement which is not foreseen in the PRIIPs Regulation. The investment strategy is the core element of the fund documentation. Also in this regard, the Commission's approach in the request for advice is right in only requiring additional procedures where the existing ones are not sufficient. The rules for the investment strategy, the transparency on this as well as the adherence to the investment strategy are core parts of the fund regulation. Hence the IPS, if any, should in these cases not be an additional requirement, but already be fulfilled due to compliance with fund regulation. We appreciate, however, that the ESAs allow taking into account certain elements set out in industry initiatives' transparency codes. Although we are not sure that current reporting according to transparency codes could be used for such disclosure, we welcome the optionality.

***Technical Advice 5: Disclosure of Investment Policy Statement to Retail Investor***

*Retail investors should be able to access the IPS prior to their investment decision. This could be done by reference in the KID to the manufacturer's website or, where applicable, to the prospectus, provided that the information is accessible continuously for the lifetime of the PRIIP.*

While we generally understand the idea that retail investors should be able to access the IPS prior to their investment decision, we again raise our concerns regarding the additional disclosure requirement. The requirements will come as an add-on to the disclosure requirements already foreseen in the sectoral legislation. Depending on the actual wording of such requirement, it could constitute a responsibility for the distributor which in fact could **become a barrier to distribute EOS PRIIPs**. At the very least, the ESAs should clarify that this is no additional information requirement at the point of sale but something which could be provided for with a reference in the PRIIPs KID alone.

Furthermore, should the ESAs stick to the concept of IPS, it should be clear that there is a choice for manufactures to publish the IPS on the website even in case a prospectus is available. First, we think that today's investors are more likely to take a look at the website than at a prospectus. Secondly, publication of the IPS on the website allows for an easy adjustment of the IPS, if necessary. Clearly, a prospectus should contain information in line with the PRIIPs KID. However, the IPS on a website might give a more detailed outline of the RI policy.

***Technical Advice 6: Monitoring Procedures and Controls***

*As part of the manufacturer's compliance with product governance measures the development and implementation of ongoing monitoring procedures and controls shall be sufficient to ensure investors can be confident that the investment strategy is properly implemented and adhered to over time. The IPS shall provide summary details on these measures, and where relevant, establish and explain links between the EOS PRIIP and its positive impact on publicly accepted and sustainable targets, also taking into account the more or less direct expected EOS impact.*

*These product governance principles should be applied in a proportionate manner: the more indirect the EOS impact of the PRIIP is, the more information must be provided and increased monitoring/control effort needs to be applied.*

First, the adherence to the investment strategy should not prevent the EOS PRIIP manufacturer from changing the strategy in line with sectoral legislation. Second, for this Technical Advice our concerns regarding the ESAs mandate apply as well (see in particular comment to Technical Advice 2). Third, we again would like to point out that the **wording indicates an Impact Investing strategy** when requiring that the manufacturer explains the links between the EOS PRIIP and its positive impact. Accordingly, this should be adjusted.



**Technical Advice 7: Review of EOS PRIIP**

*Manufacturers shall review the EOS PRIIP on an ongoing basis in order to ensure the product performs as intended, and assess compliance with the EOS objectives and the corresponding investment strategy as stated in the IPS. The review of the governance processes and performance of EOS PRIIPs shall be performed at least annually, with the actual frequency of reviews taking into account the complexity of the investment strategy and the IPS.*

*As part of the product governance rules, manufacturers shall establish and implement procedures and steps necessary and appropriate to restore compliance with the EOS objectives and investment strategy set out in the IPS.*

*Manufacturers shall inform retail investors in EOS PRIIPs about the outcome of their regular reviews and in particular about any significant deviations from the EOS objectives and investment strategy set out in the IPS and the procedures and steps to be implemented to restore compliance.*

The requirement for monitoring of ongoing compliance with the investment strategy already applies to investment funds (see also comment to Technical Advice 2). However, we are not sure that a monitoring of an ongoing compliance is within the mandate of the PRIIPs Regulation which only requires procedures to establish whether a PRIIP targets environmental and social objectives. It does not refer to any ongoing oversight requirements. Moreover, as already pointed out, the Commission only requested additional requirements where sectoral legislation was not sufficient and only insofar as the strategy is properly implemented.

More importantly, however, is that again the **ESAs require another additional information** to be provided to investors regarding any deviations from the EOS objectives and investment strategy. In this respect – in addition to the PRIIPs KID – the ESAs introduce two disclosure requirements which are not foreseen in the text of the PRIIPs Regulation. Consequently, at least the last paragraph should be deleted.