

# 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

EUSIPA (European Structured Investment Products Association)

\* 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.**

EUSIPA bundles the voice of the issuers of structured investment products to retail customers in ten major European markets, including Switzerland and the UK. All of the products sold by entities represented through EUSIPA in the European Union require the provision of a PRIIPs KID.

Before commenting on single aspects of this call for evidence and I line with statements made on the EU Commission's consultation on the Retail Investment Strategy, EUSIPA wishes to mark up that any fundamental changes of the way the retail distribution of financial products is being governed in the EU, strictly need to be prepared by a wholistic analytical evidence-based exercise looking at all existing relevant regulatory mechanisms that potentially are impacted by such change.

This must include but is likely not limited to probing for detrimental or unwanted correlations new provisions regarding PRIIPs KID content requirements might have with the existing (or any future) rules on client categorisation, the MIFID target market requirement, and the MIFID suitability and appropriateness tests.

On a broader basis, EUSIPA remains concerned about too frequent changes of the PRIIPs regime (roughly each 9 months), which puts the reliability of the technical standards underpinning the product documentation into question and hence plays de facto against their effective use at the retail point-of-sale.

In light of the too frequent changes occurred to the PRIIPs RTS, EUSIPA would recommend that, once the

revised RTS endorsed by the Commission on 7 September 2021 become ultimately applicable, no further material modification to this regime is made for at least a number of years.

Last but not least it should be noted that, despite substantial feedback provided by EUSIPA in the course of 2019 and 2020 on the PRIIPs Regulatory Technical Standards with regard to fundamental issues for structured products, the revised RTS endorsed by the EU Commission on 7 September 2021 have unfortunately not taken technical suggestions on board, which is exemplary illustrated by the fact that the scenarios of auto-callable products and “Category 2” products will lead to worse outcomes than under the currently applicable RTS. This is an unfortunate evolution as the current status will foreseeably result in the need to modify again selected items of the RTS in a future Q&A document raising the known encompassing problems such as the question to what extent Q&As having a final character and having to be seen as binding for NCAs, which already in the past exacerbated the application of many PRIIPs rules in the internal market.

## 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?**

As for structured products, EUSIPA makes reference to its own statistics (published on a quarterly basis under <https://eusipa.org/category/market-reports/>) and the statistics provided by its member associations, which refer partially to information compiled by external service providers. These national market statistics are all published on or are accessible through the relevant national association websites (for an overview of the links see <https://eusipa.org/about/> under “members”).

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**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?**

**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?**

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

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

Looking at the KID and its content next to marketing material, EUSIPA wishes to stress that both seem not really comparable with each other. The different kinds of documents used for investor information purposes in practice partly have to comply with requirements originating from legal sources other than PRIIPs Regulation, most notably those that form part of the distribution governance rules under MiFID.

“Marketing material” in practice entails always information of the product of a more “deeper” nature (such as differences to other product types, potential portfolio contexts and market aspects which the product is meant to respond to or tax implications), which are not (and cannot be) provided in a short-form information document with maximum length as the PRIIPs KID.

The before also illustrates why the KID as such cannot be targeted to the prototype of an “average” retail investor, but only to an investor who already has gained a basic understanding of relevant product type (outside of KID), an aspect that fundamentally is covered by the concept of the MIFID target market which has to be considered as one overarching principle for the provision of product information material, including the KID.

More generally, the KID remains a highly formalised document, within which it is not permissible to provide additional relevant information in detail, for example on relevant risks, the market or portfolio context of any investment.

## **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?**

EUSIPA wishes to mark-up that as the products requiring a comprehension alert have been defined by reference to the notion of “complex products” under MiFID, currently the vast majority of all KIDs carry this alert. It should not be overlooked that this approach (comprehension alert coupling with MIFID complexity notion) had been chosen in spite of initial warnings that such approach would make it difficult for investors take any added value from this information.

The addition of UCITS to the product scope will not improve this situation – the practical differentiation will then just reflect the approach for defining “complex products” under MiFID. As long the approach taken for including this kind of alert does not make it clear for investors on which basis they are warned regarding particular products, EUSIPA is of the opinion that it would make more sense to abolish this alert.

Furthermore, cursory reference is made at this point to the well-known but largely ignored fact that complexity does not equate riskiness. This can already be derived from the observation that complexity of a product often is caused by features being added to the product structure that actually work out to the investor’s advantage (such as capital, currency or issuer default protection, for example).

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

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

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

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

### 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.**

While it is difficult to quantify the KID production costs and with the indication of “from-to” range not being considered useful, EUSIPA would like to detail at least the origin of single cost components to be considered in the KID production and update, as is set out hereunder:

Answer on (a) - Project costs (incurred, for example at each change of Level 1 rules, RTS or Q&A updates) resulting from the need to cover the following management functions, in the order of their timely sequencing:

- Legal analysis
- Participation in the industry standardizing work on technical specifications, notably through fora such as the EUSIPA Technical Working Groups and those of other European associations (including Insurance Europe for all insurance wrappers and EFAMA for fund-linked products, all of which also relate to structured products), FinDatEx and others.
- IT developments, both internally (including tests with the issuers' front offices) and externally (sub-contractors and data vendors)
- Translations
- Update of issuer websites
- Investment in centralized industry solutions/repositories for publishing the document, and the related meta-data feed (e.g., those set up for RegXchange, an industry-wide platform for the harmonization of KID technical content on a European/cross-country level, and additional ones addressing specific needs arising from national distribution specifics)
- Compliance teams and/or external providers for monitoring quality of KIDs
- Change management and training (structuring teams, internal and external salesforce)

Answer on (b) - Running costs (incurred as long as the regime in place) are rooted in the following:

- Operations team to maintain the production tools
- Potential cost charged for updates by external providers (on a per KID basis)
- Client support team to answer question from investors
- Front office and legal teams required to follow discussions on Level 1, RTS and Q&A changes, including replying to consultations

More generally it must be observed that all of the above costs may be significantly increased for manufacturers and distributors operating in several European markets as they have to adapt their, often highly automatized, KID production systems to the various additional local requirements originating from NCAs.

**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?**

**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?**

Basically, EUSIPA sees a great level of consistency in the implementation of the EU PRIIPs Regulation from the manufacturers' perspective. Where there was substantial potential for diverging interpretations, stemming from lack of clarity in the Regulatory Technical Standards (RTS) in their first version, industry trade bodies as EUSIPA, DDV and AMAFI/AFPDB and platforms such as FinDatEx ([www.findatex.eu](http://www.findatex.eu)) got successfully involved in the issuance of recommendations and the drafting of templates (the latter aiming at the exchange of product specific data).

Still, in some markets the practical implementation by NCAs is partly diverging to a lesser or larger extent, including NCAs taking recourse to national marketing rules that require an approval of product-related marketing material made available to retail investors.

While EUSIPA does not take a position on whether advertising and marketing rules are to be further coordinated or harmonised, EUSIPA though wishes to draw attention to the fact that any such local provisions must not be used to unduly circumvent European rules aiming to standardise product-related documents such as the securities prospectus or the PRIIPs Key Information Document, which are meant to be used, once produced within the European Union's internal market, in a uniform way across the EU jurisdictions.

Within this context it must be noted, that on an infrequent albeit more than a single case basis, some national regulatory authorities (e.g., including but not limited to the Belgian FSMA and the Italian CONSOB)

seem not willing to recognise the EU standardisation of such product documents as being sufficient and request distributors to amend documents originating from other EU markets where regulators have not objected their content.

A specific challenge arises in this context from the obligation to notify NCAs ex-ante of KIDs.

While only some national regulators have decided to exercise the option offered to them under article 5 paragraph 2 of the PRIIPs Regulation to require such an ex-ante notification, the relevant national rules differ in many respects and, more precisely, on (i) the scope of the notification obligations and relevant exemptions, (ii) the timing for filing, (iii) the entities subject to such obligation, (iv) the technical modalities for filing, and (v) language requirements.

Such national practices heavily distort the EU level playing field not only as they run counter to the idea of information consistency through EU-wide uniform product documentation for the individual product (structure) planned to be offered. Long-term, such regulatory practices have a great potential to fundamentally erode trust in the prevalence and binding character of EU standards most of which have been introduced under the deliberate choice of an EU Regulation in order to make uniform rules directly applicable on the national level and which are underpinned by even more detailed EU-wide consistent Regulatory Technical Standards (RTS).

Judging from its intention to enable retail investors to compare retail financial products across national markets, the PRIIPs Regulation strictly needs to be read as an effort aiming at establishing a maximum of regulatory coherence across the EU markets in terms of retail information provided through the KID. This consequently implies that, beyond a review for technical correctness (e.g., the translation of termini tecnici from one language into another in case of KIDs originating from another EU market with a different language regime), there is no place for the evolution of national “practices” (read specific national drafting requirements) for the implementation of the EU PRIIPs Regulation in any given jurisdiction.

In terms of the preapproval of marketing material and the KID which is required in some of the EU national markets, EUSIPA wishes to draw attention to the fact that the inconsistent practice both in terms of turnaround/feedback timespans as well as the frequency, scope and content of material objections (read objections extending beyond a technical review – see above) often leads to disruptions in particular in the online business, where retail customers in all markets expect a high responsiveness (in terms of “ability to deliver”) from their banking institution on any product distribution-related functionalities, such as the provision of information material.

### 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?**

**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?**

Based on the feedback EUSIPA received from its members, distributors active on the national markets did not mark up any challenge in receiving the KID in their preferred media format. The online transmission tends to be the preferred channel for communication with the exception of some product recommendations and/or sales-related information that are still provided “physically”/ in individual conversations held within local branches and/or with financial advisors.

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

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

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

EUSIPA is of the opinion that, on a general basis, the KID content should be the same in different formats (or “media”) with any future rules not discriminating between types of investors that have a preference of one format about another.

When providing legally required information and documents – and this applies not only to KIDs – manufacturers and distributors prefer the electronic form for cost, efficiency and sustainability reasons. Consequently, paper-based information should be the exception and should be maintained only upon the client’s request. In addition, it is of the utmost importance that the way pre-contractual disclosure documents are presented to the client is aligned. The fact that the MiFID II information (e.g., suitability report and ex-ante cost information) can be sent electronically to the investor, whereas the PRIIPs KID still needs to be provided to the investor in paper (default option) poses a difficulty. Therefore, the PRIIPs Regulation should be brought into line with the MiFID II in this respect.

**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?**

EUSIPA does not support a layering of the KID information to be presented via pop-ups or via multiple link-accompanying layers because such solutions could conflict with the objective that the document should be read as a whole, thereby ensuring retail investors understand the product’s main features, its risk indicator, performance scenarios and the costs table, most of which are dependant on and related to each other.

A mandatory layering could also conflict with the preference of some investor for the full weblink, or the paper copy. If the ESAs nonetheless propose a layering, e.g., via pop-ups, it should be left optional and not be made mandatory.

## 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.**

EUSIPA is of the opinion that the product scope should generally be in line with the underlying justification for the existence of a KID in the first place. Any application in the mentioned cases needs to be decided based on their qualification as a PRIIP.

**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?**

EUSIPA is inclined to look positively at the position that in light of the client's information needs, there may be a case to make all investment instruments subject to the requirement for a key information document and that products used to hedge risks are outside its scope. Hence, OTC derivatives should be excluded based on the fact that they are usually not considered to be investment products. In their Q&A, the ESAs have already determined that the statutory requirements do not fit these products and consequently made changes to the statutory content of the KIDs (see ESAs Q&A on the PRIIPs Key Information Document (KID), JC 2017 49, Derivatives, Q 5). We therefore believe that the scope of the PRIIPs Regulation should be limited to investment products. We would also advocate for keeping the exemption of shares (which are not capital market instruments but as equity an asset class sui generis whose market valuation is taken as reference by capital market products/financial instruments).

Prospectively, it seems imaginable to see the KID directly integrated into the MiFID rules (as a product-specific information requirement).

**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.**

EUSIPA is of the opinion that based on the current regulatory approach, floating rate notes should be generally kept exempt, as should subordinated bonds, and all bonds with no other embedded derivatives than a make-whole clause.

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

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

EUSIPA agrees with the statement.

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

[1] For example an annuity.

[2] This might include, for example, employment based incentive schemes

EUSIPA is not supportive of adding criteria to define the scope of PRIIPs such as maturity of the product or a decumulation objective.

**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?**

EUSIPA would welcome this aspect to be clarified by regulatory guidance as follows:

(i) SPs which are not actively marketed by a distributor after their subscription period should be deemed as (having) “not (been) made available”.

(ii) for any product, if the manufacturer has shown a visible way to exclude retail investors (such as an ad-hoc statement in the legal documentation, i.e. prospectus and or its Final Terms) these should be deemed “not (having been) made available”, even if a retail investor could potentially access the information of the legal documentation of the product through “passive” digital tools (such as a referencing website simply listing products).

**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?**

From EUSIPA’s perspective, the evolution of product taxonomies or generally, any product type standardisation efforts, should be left to market practice given that product types constantly evolve.

An example for a well-established taxonomy that caters for business and investor needs in the structured products industry is the EUSIPA Derivative Map (link). It is directed at and used by professionals in the retail manufacturing and distribution business lines for a technically correct pay-off classification in terms of capturing distinguishing features of a structured product and is grouped according to the risk level of structured products. The EUSIPA Derivatives Map is updated in line with the product landscape’s evolution across the main markets represented by EUSIPA.

### 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?**

EUSIPA would not support the notion of the current standardisation degree being detrimental to a proper understanding and comparison of products. While it is important to adhere to the high standardisation, discretionary elements should be eliminated as far as possible when drawing up the KIDs. Further, the right balance needs to be struck between comparability and understandability.

The new PRIIPs RTS have changed significantly the content of the KID by amending the requirements on performance scenarios and cost tables of structured products. It is questionable whether these changes will have a positive effect on comparability.

EUSIPA however wishes to underline its view that in light of the different roles products captured by the PRIIPs Regulation could play in the retail investor portfolio context (arising from the manifold variations in terms of legal wrapper, specific payoff modalities, maturity, underlying's market exposure and issuer risk) and considering that important investor issues may not be covered by the KID information, such as the tax treatment of payoffs/earnings, "comparability" should not be treated as a stand-alone feature of a KID in a sense that every KID allows to fully compare the product it relates to any other (product with a KID).

Comparability should rather be seen as a common, albeit not guaranteed, advantage of a PRIIPs KID in a way that specific parts of product information provided in one KID, upon a case-by-case verification, could indeed be comparable with equivalent information in another KID and thus allow for a comparative conclusion on these aspects between two products.

To illustrate the before by way of an example – while full comparability exists between the issuer risk levels for manufacturers of a leverage product and of an insurance product, due to the clear rating indication, both products have totally different roles in a retail investment context and also very likely different tax treatments, making them on a wholistic (portfolio) basis actually totally incomparable.

EUSIPA is of the opinion that these limitations of comparability at the level of pre-contractual documentation have to be accepted.

The main reason is, as stated before, that precontractual documentation is not meant to replace the provision of financial advisory services to retail investors. EUSIPA wishes to mark-up that while the PRIIPs KID, as pre-contractual documentation compulsory to be used for providing information on more sophisticated ("complex") financial products, allows for comparing the captured single technical features between different PRIIPs, it does not replace a broader consideration of the investment context, that more often than not include aspects not depicted in the KID such as tax implications (e.g., common capital gains tax/income exemptions for packaged insurance products) or portfolio management considerations (e.g., the hedging function of a PRIIP).

In terms of improving the comparability it could be envisaged to open the KID requirements, up to a certain level, for asset-class specific features whose understanding is of prime importance for the investor but which currently is not permitted under the RTS. The insertion of any such additional information would need to be left to the manufacturer, so as to allow for the provision of bespoke information considered useful for the retail investor.

**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?**

EUSIPA would assume that, in light of the different wrappers and different regulations applying to them, it could make sense to allow, within some clearly defined boundaries, for some flexibility of the wordings to be used within the various sections of the KID but not change the number of sections, neither their format nor their order as prescribed in the relevant Level 1 provisions.

Generally, any rules dealing with a differentiation of products should not be overly granular but be limited to

some broad categories and consider the correlation with the other regulations, such as MIFID and IDD that a specific legal wrapper is already subjected to/covered by.

We would therefore like to emphasize that greater value should be accorded to understandability than to comparability between different products. Comparability matters most within the same product category and should not be expanded artificially to different categories of products that, by their nature, cannot be compared due to their different features.

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

Answered under Q28 and Q27.

### 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?**

EUSIPA would not support changes to article 8 in the mentioned sense. EUSIPA is of the opinion that Article 8 is sufficiently clear and that rather than rushing Level 1 changes, a sufficiently long application period should be maintained once the RTS as endorsed by the EU Commission on 7 September 2021 become applicable.

Under any future review careful consideration should be given to assess whether the changes made already to the KID (especially but not limited to the new cost tables without the reduction-in-yield) are delivering a sufficiently good level of understandability.

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

As set out before, EUSIPA strongly emphasizes the need for more stability with regard to the requirements on the KID structure and scenario/cost presentation. EUSIPA is not convinced that layout changes would fundamentally change the understandability of the KID sections for retail investors.

### 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?**

EUSIPA would argue that while the conditional consideration of past performance data in methodologies for calculating future performance is acceptable, the known doubts about the usefulness of past performance information as such persist, in particular in terms of the danger of biased decisions of retail investors assuming past performance is the key indicator for future value evolution. This is widely seen as a misleading notion and under MiFID even recognised as such.

### **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?**

No. EUSIPA recommends keeping the content of article 8 (3) (d) iii unchanged on Level 1, and rather address details of the assumptions to be made for performance scenarios in a later review of delegated legislation.

More generally, EUSIPA strongly supports keeping forward-looking probabilistic performance scenarios for structured products, as the consumer testing carried by the EU Commission has shown their superiority over other types of scenarios (at least as far as the retail investor understanding of SPs is concerned).

It may be worth testing though at the above-mentioned later stage, the use of a risk-free return (rate) as potentially alternative approach that seems to lead to favourable results for many packaged products.

### 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?**

EUSIPA strongly supports an alignment of cost information between PRIIPs and MIFID 2. The amended PRIIPs RTS permit such alignment with the exception of the Cost Table 2. The presentation of exit costs of structured products with a recommended holding period of 1 year or less is (still) misleading.

## 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?**

## 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.**

No further points.

### Contact

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