



RESPONSE TO THE EUROPEAN SUPERVISORY AUTHORITIES

SMSG response to ESAs on their joint Call for evidence on the European Commission mandate regarding the PRIIPs Regulation

Contents

I.	Introduction.....	1
II.	General survey on the use of the KID.....	3
III.	General survey on the operation of the comprehension alert.....	5
IV.	Survey on the practical application of the rules.....	5
V.	Use of digital media.....	6
VI.	Scope of PRIIPs Regulation.....	7
VII.	Differentiation between different types of PRIIPs.....	9
VIII.	Complexity and readability of the KID.....	10
IX.	Performance scenario and past performance.....	10
X.	PRIIPs offering a range of options for investment (Multi-Option Products (“MOPs”)).....	12
XI.	Alignment between the information on costs in the PRIIPs KID and other disclosures.....	12
XII.	Other issues.....	13

I. Introduction

Q1: Please insert here 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.

The SMSG is grateful to the ESAs to have the possibility to share its view about important issues related to the PRIIPs Regulation. In the last few years, the SMSG has published several documents providing its position on matters related to PRIIPs Regulation¹. Additionally, the SMSG has recently produced opinions in the area of retail investor strategy that touch upon PRIIPs-related issues².

¹ We refer to the following documents:

- SMSG Advice on the ESA’s joint Discussion Paper “Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPS)”, 17 February 2015 (ESMA/2015/SMSG/005);
- Reply to the Technical Discussion Paper on PRIIPs, 17 August 2015;
- letter on past performance to the President of the European Parliament, 13 October 2015 (ESMA/2015/SMSG/028);

The SMSG has always been a strong supporter of the overall aim of the PRIIPs Regulation (i.e., to enhance investor protection improving disclosure and establishing uniform transparency rules on PRIIPs). However, this goal has not yet been reached, and some changes to the current regulatory framework are needed.

Evidence shows that the current regulatory requirements lead to information documents that are not deemed as valuable to investors. Paul et al. (2019)³, based on a sample of 153 banks and 2,852 investors based in Germany, conclude that the objective of PRIIPs regulation to enhance transparency and comparability appears to have been missed. According to their empirical analysis:

- 69.0% of their sample of investors do not read the document⁴;
- 72.5% of their sample of investors do not see any trust-building effect;
- 67.9% of their sample of investors reject the statement “The key information document/product information sheet and key investor information provide a good basis for comparison in order to take better decisions”.

The Paul et al. (2019) study also reports that 62.7% of their sample of investors consider the KID sensible, and only 8.8% consider it “completely pointless”. The authors explain the apparently contradictory results based on the current lack of trust surrounding the KID. Once the teething problems will be resolved, the authors see substantial benefits in the future. Looking forward, the KID appears in a positive light, particularly for less experienced investors, according to the authors of the study.

The evidence mentioned above shows that many investors do not read the KIDs, which are sometimes complemented by other documents⁵.

The current situation is consequently not optimal and we expect that it will not remain unchanged in the future. The PRIIPs regulatory framework needs to be thoroughly re-thought to lay the ground for investors’ concrete use of PRIIPs KIDs. In this respect, further thoughts may be needed regarding the relation between comparability and understandability. It has to be assessed whether comparability can be reached over the whole (and wide) spectrum of products in the PRIIPs scope.

For this important policy decision, the practice and regulation of other markets (e.g., UK) might also be helpful to consider in the interest of the competitiveness of the European capital market.

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- SMSG Opinion Paper on PRIIPs Regulation – Performance Measures, 5 February 2016 (ESMA/2016/SMSG/006);
 - letter on performance scenarios and cost calculations to the Vice-President of the European Commission, 20 July 2018 (ESMA22-106-1084);
 - SMSG reply to the Joint Consultation Paper concerning amendments to the PRIIPs KID, 4 December 2018 (ESMA22-106-1591);
 - SMSG advice on draft regulatory technical standards (RTS) amending the PRIIPs Delegated Regulation, 26 February 2019 (ESMA22-106-1684);
 - Response to the ESAs Joint Consultation Paper concerning amendments to the PRIIPs KID, 13 January 2020 (ESMA22-106-2077).

² We refer to the following documents:

- SMSG response to the European Commission’s consultation on the EU Strategy for Retail Investors, 29 July 2021 (ESMA22-106-3504);
- SMSG response to the call for evidence on the EC mandate on certain aspects relating to retail investor protection, forthcoming.

³ Paul, S., Schröder, N., & Schumacher, S. (2019). *MiFID II/MiFIR/PRIIPs Regulation Impact Study: Effectiveness and Efficiency of New Regulations in the Context of Investor and Consumer Protection*. Chair of Finance and Banking. Ruhr-Universität Bochum. Report on behalf of the German Banking Industry Committee. Source: https://die-dk.de/media/files/Auswirkungsstudie_MiFID_II_Prof_Paul.pdf.

⁴ Analogously, according to a survey released by the German Derivatives Association (Deutscher Derivate Verband, DDV), the majority of investors rely on information from sources other than the PRIIPs KID (e.g., media reports and marketing material). Only 15.3 percent use the legally required key information sheet as a basis for their investment decisions.

⁵ For example, in Germany the “Produktinformationsblatt”, based on a template initiated in 2009 and further developed in the following years, is widely used in practice, especially for bonds and structured securities.

Lastly, notwithstanding the need for reforms, the SMSG would like to highlight that the timing of the changes to level 1 regulation should also take into account the timing of level 2. The latest changes to level 2 PRIIPs regulation will be effective since 1st January 2023⁶, whereas the level 1 regulation is under revision. The SMSG believes that a reform should start with the level 1 PRIIPs Regulation, where key provisions on the content of the document must be amended. However, it should also be noted that the availability of evidence about the effectiveness of the level 2 changes would be helpful to calibrate the revision of the level 1 text. Additionally, the ESG regulatory framework and its interpretation are far from being stabilized.

Concurrently, there is also a clear need to rapidly reform level 1 regulation with respect to specific areas, like past performance and performance scenarios. Such themes will be discussed in detail in the related questions of the ESAs call for evidence.

II. General survey on the use of the KID

Q2: 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?

The Italian NCA (CONSOB) reports that in 2020⁷:

- about 1.19 million KIDs were notified to the Italian authority, especially updates related to products designed by manufacturers mainly of non-Italian nationality;
- certificates and covered warrants represent 90% of PRIIPs.

CONSOB also discloses aggregate statistics of KIDs by type of product (**Table 1**) and type of manufacturer (**Table 2**)⁸. The ex-ante notification of the KIDs to CONSOB is no longer required since 1st January 2021.

Table 1 - KIDs notified to CONSOB in 2020 by type of product (*)

	New products		Updates		Total	
	#	%	#	%	#	%
Securities	26,944	95.8	1,157,494	99.5	1,184,438	99.4
Derivatives	434	1.5	2,814	0.2	3,248	0.3
IBIPs	593	2.1	3,332	0.3	3,925	0.3
CISs	142	0.5	161	..	303	..
Deposits	3	..	3	..	6	..
Total	28,116	100	1,163,804	100	1,191,920	100

(*) *Securities are securitized derivatives (e.g., covered warrants), asset backed securities and bonds; Derivatives are both exchange traded and over-the-counter; IBIPs are insurance-based investment products; CISs are collective investment schemes; Deposits are structured deposits.*

⁶ https://www.europarl.europa.eu/doceo/document/TA-9-2021-0461_EN.pdf.

⁷ CONSOB, *2020 Annual Report*, Rome, 31 March 2021, pages 40 and 43 (in Italian).

⁸ CONSOB, *2020 Annual Report. Statistical Annex*, Rome, 31 March 2021, page 115 (in Italian).

Table 2 - KIDs notified to CONSOB in 2020 by type of manufacturer (*)

Nationality		Industry	New products	Updates	Total
Non-Italian			26,173	1,147,523	1,173,696
	<i>Of which:</i>	Banks	16,304	762,466	778,770
		Insurance companies	54	578	632
		Investment companies	9,815	384,479	394,294
Italian			1,943	16,281	18,224
	<i>Of which:</i>	Banks	1,260	13,368	14,628
		Insurance companies	542	2,759	3,301
		Investment companies	35	48	83
		Asset mgt companies	80	73	153
		Non-financial companies	26	33	59
Total			28,116	1,163,804	1,191,920

Q3: 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 automatized tool that can help the retail investor in making comparisons among products, for instance using KIDs?

We have information about the markets of some Member States. Financial advisors in Germany as well as in Sweden do not often use KIDs. They prefer to use the German and Swedish, respectively, product information sheets, marketing materials or similar documents. This evidence appears to be based – inter alia – on the fact that issuers have greater freedom to choose different meaningful scenarios.

Q4: If this is the case, what is preventing distributors or financial advisors from using the KID when they choose a product for a client?

We have access to information about the German market. In this market, other documents are used in practice (see, e.g., the “Produktinformationsblatt” mentioned in footnote 5). Additionally, a study by BaFin⁹ found that many corporate issuers (manufacturers) refrain from issuing a KID for cost- or liability-related reasons. This led to a significant shrinking in the retail investors’ bonds trading volume since 2019 (see also our response to Q24).

Q5: 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?

Q6: What are your experiences regarding the extent of the differences between marketing information and the information in the KID? What types of differences do you consider to be the most material or relevant in terms of completeness, plain language, accuracy and clarity? What do you think might be the reason(s) for these differences?

We have no direct evidence to provide about the differences between marketing information and the information in the KID. However, as known, marketing material and KIDs are documents of diverse nature. Their objectives as well as their legal base, where present, are different and hence they are not comparable¹⁰.

⁹ https://www.bafin.de/SharedDocs/Veroeffentlichungen/DE/Fachartikel/2021/fa_bj_2104_Unternehmensanleihen_Kleinanleger.html.

¹⁰ Although marketing materials might be easier for retail clients to understand, it should also be noted that their contents and presentation formats might not be as neutral as those of regulated documents.

III. General survey on the operation of the comprehension alert

Q7: What are your experiences regarding the types of products that include a comprehension alert?

For complex PRIIPs, a "comprehension alert" must be included in the KID. Due to their nature, almost all PRIIPs are labeled with a comprehension alert. This implies that the warning function for retail investors intended by the use of the comprehension alert might be somehow reduced – if we consider a comparison among PRIIPs – as the more PRIIPs are labeled with the comprehension alert, the less investor awareness is actually achieved. Differently, the value of the comprehension alert is higher when we consider its capacity to signal the complexity of the product compared to simpler financial products.

Non-complex products (e.g., UCITS) do not require a comprehension alert. In addition to UCITS, national regimes for retail AIFs (also known as UCITS-like funds) should not use a comprehension alert when structured as non-complex products.

Q8: Do you have or are you aware of the existence of data on the number and type of products that include a comprehension alert? If you have such data, would you be in a position to share it with the ESAs?

We have not and are not aware of the data requested.

Q9: What are your experiences regarding the extent to which retail investors take into account the inclusion of the comprehension alert?

We have no evidence to share on this matter.

Q10: As a retail investor or association representing retail investors, are you aware of the existence of a comprehension alert for some PRIIPs?

The SMSG is aware of two examples of PRIIPs highlighted by Better Finance where the treatment of the comprehension alert might deserve further scrutiny¹¹.

Q11: What are your experiences regarding the extent to which financial advisors consider the comprehension alert?

IV. Survey on the practical application of the rules

Q12(a): For PRIIP manufacturers or sellers: (a) Please describe the different types of costs incurred to comply with the PRIIPs Regulation.

The following costs are usually incurred to comply with the PRIIPs Regulation:

- front office staff to build product specifications (Structurers, Sales, Quants);
- IT staff to undertake necessary IT developments;
- staff to test KID;
- compliance and legal costs, internal as well as external consultants and law firms;
- interaction between manufacturers and distributors;
- translation firms;
- publishing (including centralized industry solutions/repositories for the document).

Q12(b): For PRIIP manufacturers or sellers: (b) Can you provide an estimate of the average costs per PRIIP of complying with the requirements of the PRIIPs Regulation? Where possible, please

¹¹ <https://betterfinance.eu/wp-content/uploads/BETTER-FINANCE-Response-ESAs-Call-for-Evidence-PRIIPs-16122021.pdf> (page 6).

provide a breakdown between the main types of costs, e.g. manufacturing, reviewing, publishing, etc.

We have no evidence to share on this matter.

Q12(c): For PRIIP manufacturers or sellers: (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?

We have no evidence to share on this matter.

Q13: What are your experiences regarding the extent to which the PRIIPs Regulation is applied in a consistent manner across the EU for the most sold types of PRIIPs? What are the main areas of inconsistencies?

From the manufacturers' side, a substantial degree of consistency across markets emerges for retail investment products. This may also be the result of templates that are commonly used in the industry.

However, practical implementation of the regulation by NCAs is partly diverging. In particular, we are aware of cases in which NCAs did not accept KIDs originating from other EU markets and asked distributors to amend the KIDs, e.g., in order to comply with national advertising and marketing rules. Such discrepancies and gold plating should be avoided as it goes against the purpose of the PRIIPs Regulation.

In addition, some NCAs apply the requirement to provide ex ante notification of the KIDs set out in Article 5(2) of the PRIIPs Regulation. We believe that this provision should be re-thought, having in mind the goal of a more integrated European capital market.

The supervision of PRIIPs KIDs should benefit from a consistent approach, as foreseen in the EU regulation. National competent authorities, being aware of national markets' specificities, should define at the national level the best way of complying with the EU regulations.

V. Use of digital media

Q14: 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?

Q15: 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?

Q16: How do you as a retail investor, or association representing retail investors, prefer to receive or view the KID?

Q17: What are your experiences regarding the preferred media for product distributors and financial advisors when using the KID?

Manufacturers and distributors prefer the electronic format (namely PDF) to provide legally required information and documents for cost-, efficiency- and sustainability-related reasons. This holds not only for KIDs. Consequently, paper-based information should be maintained only upon the client's request.

In general, the SMSG believes that the media framework should be inclusive. KIDs should be primarily accessible in digital format. However, investors should also have the right to have access to a paper document free of charge, if they wish to do so.

Q18: Should changes be made to the PRIIPs Regulation so that the KID is better adapted to use on different types of media?

Clarity and readability of the KID should be guaranteed in different formats (or media). Obviously, the content should be the same across different types of media.

Additionally, we suggest aligning the way pre-contractual disclosure documents are presented to the client. 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 (as default option) creates an asymmetry. The PRIIPs Regulation should be brought in line with MiFID II in this respect, keeping the right for the investor to ask for the paper version, free of charge.

Q19: Do you think it would be appropriate to apply the approach taken in the PEPP Regulation 2019/1238 to the PRIIPs KID?

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. This approach looks appropriate and is aligned with the one that we suggest in response to the previous question Q18.

The PEPP Regulation also allows for the layering of information (Article 28(4)) for PEPP KIDs provided in electronic format. This means that detailed parts of the information can be presented through pop-ups or links to accompanying layers. A KID should provide investors with all the information needed to understand and compare the product. On the one hand, layering might make it more difficult for investors to obtain the relevant information at a glance in one document as there is a risk that the investor does not read the information contained in the additional layers. On the other hand, layering also allows to present the information in different layers of relevance (e.g., from the information “at a glance” essential for all audiences to more detailed information available in a subsequent layer for those interested). Layering should be allowed if it does not hide essential information at the first view, and retrieving the additional layers is easy to perform¹².

VI. Scope of PRIIPs Regulation

Q20: 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.

The scope of the PRIIPs Regulation should not be extended to any of the products referred to in Article 2(2), points (d), (e) and (g)¹³. Although in some cases products falling in the scope of the PRIIPs Regulation are used for retirement purposes, it should also be noted that the specific features of pension products (e.g., their long-term horizon) require specific risk and reward indicators¹⁴. At this stage, given the issues related to the actual implementation of the PRIIPs Regulation as it is, rather than extending the current scope of the regulation, it seems preferable to address outstanding issues (e.g., as regards certain corporate bonds).

Concerning point (d), which in turn refers to points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC, it could be noted that Directive 2003/71/EC is no longer in force. However, we may want to assume that it is now pointing to its replacement, Regulation (EU) 2017/1129.

As regards point i) of Article 1(2) of Directive 2003/71/EC, which refers to ‘bostadsobligationer’ issued by credit institutions in Sweden (Swedish covered bonds), we point out that these bonds are however no longer mentioned explicitly in Regulation (EU) 2017/1129 which replaced Directive 2003/71/EC. In any case, covered bonds should be out of the scope of the PRIIPs Regulation as they are not packaged products.

¹² The overall length of the KID should not exceed the maximum length of the KID (i.e., three pages), taking into account the length of the layered information, which should be included in the assessment of the document length.

¹³ 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.

¹⁴ The PEPP regulation in 2019 and its delegated acts in 2021 recall the need for consumers to benefit from information adapted to the retirement savings objective of the PEPP and consequently establish a specific framework for personnel pension product.

Q21: 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?

KIDs should be prepared according to the PRIIPs Regulation for all products that qualify as PRIIPs to provide a level playing field for all market participants and products. Against this background, we do not see compelling reasons for significant changes in the scope of the PRIIPs Regulation. However, a potential extension of the scope might be discussed for financial products that may be considered direct alternatives to products falling in the scope of the PRIIPs Regulation (e.g., certain personal pension products). In this respect, instead of the PRIIPs KID, the PEPP KID would be preferable concerning, e.g., the timeframe taken into account for the recommended investment horizon as well as the risk indicator.

Q22: 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.

The scope of the PRIIPs Regulation should be limited to investment products and products used to hedge risks should be outside its scope. Since the actual function performed by a product (e.g., whether investment or hedging) depends on a case-by-case basis, and is not necessarily attached to the product itself, we are also aware that the distinction between investment and hedging might imply further (undesired) complexity in the regulatory framework. In their Q&A, ESAs have determined that adjustments to the wording of KIDs are needed for swaps and similar OTC derivative products¹⁵.

Q23: 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?

Q24: Do you agree with the ESA Supervisory Statement relating to bonds and what are your experiences regarding the application of the Statement?

The legal uncertainty that has surrounded the application of the PRIIPs Regulation to bonds has been most unfortunate for EU capital market, and has resulted in issuers not wanting to offer their bonds to retail clients.

The guidance provided by ESAs concerning the type of bonds that fall within PRIIPs scope was beneficial. However, it is not sufficient¹⁶. We share the ESAs recommendation to the co-legislators to introduce amendments to the Regulation to specify more precisely which financial instruments fall within its scope.

In relation to the scope of PRIIPs, we observe that in July 2021 the FCA issued a consultation paper¹⁷ to seek views on targeted amendments to address concerns with the PRIIPs disclosure regime. The FCA proposal, among other things, is intended to reduce the legal uncertainty about when an issuer is required to produce a KID by clarifying which corporate bonds are considered a PRIIP. The FCA says that the lack of clarity in the corporate bond market has meant issuers have either taken on the cost of producing a PRIIPs KID for products where they were not required to do so, or curtailed access for retail investors. Whilst more evidence is required, it appears as though this has resulted in a reduction in overall volume of low denomination issuances of debt securities, which has consequences for liquidity and choice in secondary markets. To address these concerns, the FCA proposes what follows.

- Debt securities with fixed coupons are not PRIIPs even if the coupons are subject to pre-defined changes.

¹⁵ ESAs, *Q&A on the PRIIPs Key Information Document (KID)*, 4 April 2019, JC 2017 49, Derivatives, Q5.

¹⁶ For example, in the German market the volume of corporate bonds traded by retail investors has dropped significantly since 2019, despite the publication of the Supervisory Statement. The number of bonds classified as PRIIPs for which the issuers did not produce a Key Information Document (KID) has increased from 50% of all corporate bonds listed at Börse Stuttgart in 2019 to 58% in 2021. Evidence updated at December 2019 about the impact of PRIIPs Regulation on retail corporate bond trading activity is available at https://www.boerse-stuttgart.de/-/media/files/gruppe-boerse-stuttgart/pressemitteilungen/de/2020/boerse-stuttgart_white-paper-brse-stuttgart_tradability-of-corporate-bonds.ashx.

¹⁷ FCA, *PRIIPs - Proposed scope rules and amendments to Regulatory Technical Standards*, CP21/23, July 2021.

- A debt security will not be a PRIIP simply by virtue of having a perpetual term or because of a subordination in creditor hierarchy.
- Incorporation of a put or call option that allows investors to demand early repayment or to convert the debt security into one or more shares, does not make the security a PRIIP (unless the exercise of the option is connected to the performance of other assets).
- A debt security should be regarded as a PRIIP if the overall return to the investor is materially determined by price movements or performance of assets other than the debt security itself, including reference assets and indices or benchmarks relating to assets or a class of assets.

Q25: 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 objective, or where there is not active enrolment?

We believe that a principle-based general definition accompanied by a list of explicit exclusions and inclusions might fit the purpose.

Q26: Do you think that the concept of products being “made available to retail investors” (Article 5(1) of the PRIIPs Regulation) should be clarified, and if so, how?

The restriction that a KID must be prepared only if a PRIIP is made available to retail investors is, in principle, sufficient. We are also aware that the same concept is used in the UCITS Directive. Clarifications might prove helpful as to whether the UCITS Directive treatment is also valid for PRIIPs and to the extent to which "making available" requires an active action aimed at selling the product.

Q27: Do you think it would be beneficial to develop a taxonomy of PRIIPs, that is, a standardized classification of types of PRIIPs to facilitate understanding of the scope and that could also be used as a basis for the information on the “type of the PRIIP” in the ‘What is this product?’ section of the KID (Article 8(3)(c)(i) of the PRIIPs Regulation)? If yes, do you have suggestions for how this could be done?

We are aware of the risk that an excessively granular taxonomy might become obsolete as product types evolve¹⁸. However, we also believe that the introduction of a high-level taxonomy based on guiding principles might facilitate the understanding of PRIIPs, including the awareness of the differences across categories of products.

VII. Differentiation between different types of PRIIPs

Q28: Do you think that the current degree of standardization of the KID is detrimental to the proper understanding and comparison of certain types of PRIIPs? If so, which products are concerned?

A high level of standardization of KIDs is, in principle, positive for investors as it allows them to compare different products more efficiently. The aim of comparability is admirable. However, we also need to ensure that the information provided is relevant for the investor, considering the specific features of the instrument. The understandability of the information is a prerequisite, and comparability at the cost of precision and adequate information should not be the result. Therefore, the question becomes to what extent comparability should be prioritized, especially when it is detrimental to understandability. PRIIPs KIDs in their current standard seem to contain too many and too detailed elements, such as performance scenarios and cost tables, causing an obstacle to comparability rather than facilitating it¹⁹.

¹⁸ DDV provides an example of taxonomy relating to German products on its website: https://www.derivateverband.de/MediaLibrary/Document/Derivate-Liga_A3_2020_EN.pdf

¹⁹ Performance scenarios and cost tables do not contribute to a better understanding of the product since comparability is only theoretical in the current framework. As long as the requirements for performance scenarios and cost tables in the PRIIPs Regulation are not differentiated for products with different features, the results look rather confusing and incomprehensible to the retail investor in the absence of further (product-specific) explanations.

The provision of the same kinds of information for products that are in fact not similar risks sending a message that products are comparable. This could actually trigger confusion rather than clarity. Along the same lines, trying to define requirements that apply in the same way to all types of products in the name of comparability risks leading to unintended consequences with the outcome that certain information is not understood and/or that the information does not fit with the nature and characteristics of the product in question. Thus, for similar investment products, the PRIIPs KID fulfils the objective of allowing retail clients to compare. By contrast, for different instruments or different uses (e.g., investment or hedging purpose) PRIIPs rules do not work as well. Ultimately, the main policy objective should be to ensure that the information is understandable and valuable to make a well-informed investment decision.

Q29: 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 favor, or do you have alternative suggestions?

We believe that the first approach, which is based on the development of broad product groupings (or buckets of similar products), would be appropriate. A standardised and granular classification of different types of PRIIPs, combined with the possibility to adjust the content of the KID accordingly, would make it possible to achieve comparability and comprehensibility to a reasonable extent jointly. The comparability of products within specific product categories would also facilitate comprehensibility and allow for weak comparability across categories. In short, “strong comparability” would be the ultimate goal within a product category, while “reasonable comparability” would be possible across product categories.

To achieve this setting, that would promote a level playing field, information requirements should be slightly differentiated across product categories.

Q30: Do you have suggestions for how a product grouping or product buckets could be defined?

We have no specific proposal for the product grouping. We provide some remarks on it in our answer to Q27.

VIII. Complexity and readability of the KID

Q31: Would you suggest specific changes to Article 8 of the PRIIPs Regulation in order to improve the comprehensibility or readability of the KID?

The layout and the sequence of information do not pose a problem for the comprehensibility and readability of the KIDs. Consequently, we do not see any compelling need for changes in this respect.

Q32: How could the structure, format or presentation of the KID be improved e.g. through the use of visual icons or dashboards?

The current structure, format and presentation of the KID are adequate to meet the objectives of the PRIIPs Regulation. Any changes to layout or structures should have to be weighed against better understandability and, ultimately, assessed to understand whether it would result in higher acceptance from investors. Without such tests, changes not showing a clear benefit should be avoided. This conclusion is particularly meaningful as a previous consumer testing exercise, which results were displayed in February 2020²⁰, was inconclusive in particular with regards to the presentation of performance scenario tables.

IX. Performance scenario and past performance

Q33: Do you agree with the ESAs' assessment in the Final Report (JC 2020 66) regarding the treatment of past performance?

²⁰ ESAs Draft Final Report following consultation on draft regulatory technical standards to amend the PRIIPs KID, 30 June 2020, pp 9-10 which reiterated the findings of the consumer testing “Retail investors’ preferred option regarding performance scenarios and past performance information within the Key Information Document under the PRIIPs framework”, FISMA/2019/016/C, 27 February 2020.

The SMSG shares the ESAs' assessment that a) as a preferred approach, past performance information should be included 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*²¹ and b) a targeted amendment to Article 8 of the PRIIPs Regulation would be needed to include past performance information within the main contents of the KID.

Q34: 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?

According to Article 8(3)(d)(iii) of the PRIIPs Regulation, the KID should include – under a section titled 'What are the risks and what could I get in return?' – “appropriate performance scenarios, and the assumptions made to produce them”.

The presentation of different scenarios currently provided for the illustration of the performance within the scope of the KID does not fulfill its purpose and thus represents one of the biggest problems related to the PRIIPs Regulation²². The ESAs' work regarding the methodology underpinning the performance scenarios has raised significant challenges²³.

In January 2020 the SMSG recommended that performance scenarios should only be presented when they provide information reliable, clear and meaningful for retail investors and highlighted some technical issues and solutions concerning the probabilistic performance scenarios proposed by the ESAs²⁴.

While it may be possible to build performance scenarios (i.e., projections of potential future market returns estimated on the basis of specific technical assumptions), the SMSG observes that the accurate prediction of future market performance is an unreasonable task in a properly functioning market (i.e., when the current price accurately reflects all available information or, in short, the market is informationally efficient). However, as recognized by the ESAs work as well as by previous SMSG opinions, the results of such forecasting exercises are very sensitive to the methodology as well as to the parameters used in the estimation process. This explains why it has proved very difficult to design appropriate performance scenarios - for the products included within the scope of the PRIIPs Regulation – that would be understandable to the average retail investor, able to avoid the risk of generating unrealistic expectations amongst retail investors and allow for proper comparisons between products. In conclusion, as stated in our answer to Q34, the SMSG favors a targeted amendment to Article 8 of the PRIIPs Regulation to include past performance information within the main contents of the KID for *relevant*²⁵ funds and insurance-based investment products.

In relation to the performance scenario and past performance, we observe that - in the consultation paper issued in July 2021²⁶ - the FCA:

- proposes to remove performance scenarios from the KID;
- proposes to add a narrative description of performance in the KID;

²¹ See also our response to Q34 and footnote 25.

²² The market watchdog team of the German consumer centers has also presented practical examples to show that much of the content of the information sheets is highly problematic from the consumer's point of view. See the document available at the hyperlink <https://www.verbraucherzentrale.de/sites/default/files/2019-10/markwaechter-untersuchung-basisinformationsblaetter.pdf>.

²³ The ESAs call for evidence remarks that no academic consensus has been reached on how to develop common performance scenarios that would be equally appropriate for all types of PRIIPs and concludes that the lack of consensus proves the inherent difficulty of the performance scenarios approach.

²⁴ We refer to the following SMSG document: *Response to the ESAs Joint Consultation Paper concerning amendments to the PRIIPs KID*, 13 January 2020 (ESMA22-106-2077).

²⁵ For example, the presentation of past performance is not relevant for formula funds (i.e., “certain types of structured UCITS...” “...which provide investors, at certain predetermined dates, with algorithm-based pay-offs that are linked to the performance, or to the realization of price changes or other conditions, of financial assets, indices or reference portfolios or UCITS with similar features” (CESR/10-1318)). For such funds prospective scenarios, which illustrate the different paths of the formula for the investor and do not constitute future scenarios, function in a satisfactory manner.

²⁶ FCA, *PRIIPs - Proposed scope rules and amendments to Regulatory Technical Standards*, CP21/23, July 2021.

- does not explicitly propose the addition of past performance in the KID, although it includes an indicative wording in the draft RTS.

The presentation of past performance included by the FCA in the draft RTS consists in a graphical representation of the PRIIP's past performance over the preceding 10 calendar years, both in gross as well as net returns, accompanied by the warning "*Past performance does not predict future outcomes. The return on your investment may be very different from how this product has performed in the past.*"

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

Q35: Would you be in favor 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? What issues or challenges might result from this approach?

The use of Article 10(a) for Multi-Option Products ("MOPs") requires a separate KID to be prepared for each investment option. This implies a recalculation of almost endless combinations of the PRIIP and each underlying option, making it challenging and practically almost impossible. Therefore, the ability to use Article 10(b) is essential and it should be possible to comply by using a hyperlink to where the KID of the individual underlying investment options can be found.

The introduction of a single tailor-made KID would likely lead to a reduction of underlying investment options, negatively affecting retail investors. Such a requirement would also be very costly and challenging to implement from an IT perspective.

Q36: Would you be in favor 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: ...

Q37: 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 selected options? In this case, what type of information could be provided regarding other investment options?

Q38: 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?

The growth in digitalisation and computing power might allow the provision, in the future, of a narrower range for the fee indicators depending on the investor's choices and even, if possible, an aggregated fee indicator. The regulation should facilitate such developments.

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

Q39: 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?

Cost disclosure regimes diverge under PRIIPs and MiFID II. Such inconsistencies hinder the comprehensibility of cost disclosure information provided to the client. Additionally, the Prospectus Regulation, which equally provides for the disclosure of costs in the summaries, requires the costs to be disclosed according to the PRIIPs Regulation or MiFID II. From the investor's point of view, this situation is far from ideal as it implies that different costs may be mentioned in the disclosure documents. This suboptimal setting obstructs retail investors' understanding of financial products and contributes to information overload, which undermines the objective of transparency and understandability.

An alignment between cost definitions under MiFID II (entry costs – upfront, ongoing costs – running fees per annum, and exit costs) and PRIIPs (Reduction in Yield, i.e., the impact of raw costs on annualized return) should be sought. In connection with the harmonization of the definitions, a uniform model for cost

disclosure would also be desirable. These changes would eliminate the current legal uncertainties, improve comprehensibility, and increase cross-product comparability for investors.

MiFID II has established a comprehensive cost disclosure regime, including a requirement to provide clients with appropriate information on costs concerning financial products as well as investment and ancillary services in a timely manner (i.e., before any transaction is concluded and on an annual basis, in some instances). Since the reporting of costs under MiFID II is more comprehensive and includes not only the costs of the financial instrument but also the costs of the service, the MiFID II cost information should form the basis for an alignment. It has also been pointed out that retail investors find the reduction in yield (RIY) cost measure required by PRIIPs too difficult to understand.

XII. Other issues

Q40: Do you think that other changes should be made to the PRIIPs Regulation?

As also pointed out earlier, any changes to the PRIIPs Regulation should be carefully assessed, weighting expected benefits against potential burdens, with a specific reference to retail investors' point of view.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

Adopted on 05 January 2022.

[signed]

Veerle Colaert
Chair
Securities and Markets Stakeholder Group

[signed]

Giovanni Petrella
Rapporteur