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Joint Committee of the European Supervisory Authorities
sent via E-Mail / response form

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<u>Statement</u>: Joint Consultation Paper concerning amendments to the PRIIPs KID [JC 2019/63]

VÖIG[1] welcomes the opportunity to provide some comments and recommendations on this Joint Consultation Paper by following the foreseen questionnaire structure:

1. Are there provisions in the PRIIPs Regulation or Delegated Regulation that hinder the use of digital solutions for the KID?

In principle not but depending on the complexity of some methodological requirements, substantial implementation and adjustment efforts may reduce the appetite to go for a digital solution.

2. Do you agree that it would be helpful if KIDs were published in a form that would allow for the information to be readily extracted using an IT tool?

The relevant PRIIPs KID data is already available in a standardised form via EPT/CEPT. If data should be extracted from the KID itself (i.e. a KID in pdf format), the concrete answer will depend on technical aspects, particularly the respective software necessary. This would obviously also trigger potential implementation aspects and costs or data security considerations.

3. Do you think that the amendments proposed in the consultation paper should be implemented for existing PRIIPs as soon as possible before the end of 2021, or only at the beginning of 2022?

All potential changes should be implemented at the beginning of 2022 (also for existing PRIIPs).

4. Do you think that a graduated approach should be considered, whereby some of the requirements would be applied in a first step, followed by a second step at the beginning of 2022?

No. We do not see any merit in a graduated approach for the implementation of new regulations and requirements.

[1] The Association of Austrian Investment Fund Management Companies (Vereinigung Österreichischer Investmentgesellschaften / VÖIG) is the umbrella organisation for all Austrian investment fund management companies and all Austrian real estate investment fund management companies. VÖIG represents 100% of the fund assets managed by the Austrian investment fund management companies and real estate investment fund management companies. VÖIG represents assets under management of more than € 180 bn. www.voeig.at.

5. Are there material issues that are not addressed in this consultation paper that you think should be part of this review of the PRIIPs Delegated Regulation? If so, please explain the issue and how it should be addressed.

We would like to point to the table in chapter 12.1., Annex V Part 2 on page 67, which includes the following wording:

If there is no minimum guaranteed return [There is no minimum guaranteed return. You could lose some or all of your investment.]

We propose a change of the wording to enhance the meaning of the statement. The information for funds would be clear and not misleading, if it said "There is no obligation to make additional contribution."

<u>We assume a typo in chapter 8, Annex IV, point 8 on page 59:</u>

"8. For Category 2 PRIIPs where the invested amount accrues over time, the 10th, 50th and 90th quantiles shall be read from an estimated distribution of values at the end of the recommended holding period generated using a Monte Carlo simulation. The Monte Carlo simulation shall consist of a minimum of 50,000 paths. The methodology for constructing each path is specified in points 9-10 below."

There is no use in conducting a Monte Carlo simulation for a fund savings plan, not least, because a savings plan does not have to be qualified as a stand-alone product (thus, not automatically producing a KID). We request a clarification respectively a correction of the PRIIPs category that was really meant.

6. Do you have comments on the modifications to the presentation of future performance scenarios being considered? Should other factors or changes be considered?

Our responses are reflected in the various answers ranging from the one to question 7 to the one to question 26.

7. If intermediate scenarios are to be included, how should they be calculated for Category 3 PRIIPs (e.g. structured products)? If intermediate scenarios are not shown in the performance section, which performance assumption should be used for the 'What are the costs?' section?

Category 3 PRIIPs are not applicable for investment funds.

The intermediate scenarios must be calculated anyway (as the data is needed for the CEPT), even if the results are not shown in the respective KID. Thus, the assumption of the intermediate scenario can still be used for the cost calculations.

8. If a stress scenario is included in the presentation of future performance scenarios, should the methodology be modified? If so, how?

We welcome the cancellation of the display of the stress scenario and the intermediate scenario within the KID (whereas at the same time some data are still useful for cost calculation, see answer to question 7 above).

9. Do you agree with how the reference rate is specified? If not, how should it be specified?

Foremost we would stress the need for a clarification concerning point 5.4. on page 19 respectively the table in point 12.1. as well as Annex IV point 7 and 8, which inherit the distinction for category 2 PRIIPs by pointing out the need to properly understand the following wording (page 19):

"The three broad classes of products are:

• Funds and fund-like products which are purchased at a single point in time; and

• Funds and fund-like products where the investment accrues over time (e.g. regular premium insurance-based investment products); and

• Structured products and other structures where the pay-off profile is discontinuous or depends on distinct events over the life of the product"

It would be helpful for implementation purposes, if it was made explicitly clear that either investment funds (UCITS, retail AIF) are in scope of the first bullet point or that investment funds savings plans are out of scope of the second bullet point.

Moreover, we want to point out that the reference rate should be the interest rate curve derived from the sovereign bond prices of the country of the assets. The screening of a well-diversified portfolio (e.g. MSCI All Country World index with approximately 50 countries) and the collection of the different country yields is extremely time-consuming and difficult. Hence, we doubt the future comparability of PRIIPs, if there is a lack of determination of which rate has to be used. Furthermore, there is no description to be found within the consultation paper on how often the risk-free rate should be updated, like once a year or once a month.

10. The revised methodology specifies that the risk premium is determined by future expected yields. The methodology further specifies that future expected yields should be determined by the composition of the PRIIP decomposed by asset class, country and sector or rating. Do you agree with this approach? If not, what approach would you favour?

We strongly doubt that the effort is in any relation to the potential outcome of the revised methodology. As mentioned above, the approach is very time-consuming and complex to implement, particularly for mixed funds. Moreover, we want to highlight that the asset-specific risk premium for different types of assets as shown on page 19 are not correct for bonds (coupon rates).

11. The ESAs are aware that historical dividend rates can be averaged over different time spans or that expected dividend rates can be read from market data providers or obtained from analyst reports. How should the expected dividend rates be determined?

Historical dividend rates can be averaged over any time span (which makes it also hard to choose) and are very volatile, which again leads to significant concerns regarding the comparability of PRIIPs. Even in the case of purchasing estimated dividend rates, the outcomes may differ for the very same asset.

Moreover, we also want to take into consideration that if every company uses its own analyst's reports as data sources, those figures will be even less comparable. The numbers could even be sugar-coated in the worst case.

12. How should share buyback rates be estimated?

13. Do you agree with the approach for money-market funds? Are there other assets which may require a similar specific provisions?

There is general agreement with this approach.

14. The methodology proposes that the future variance be estimated from the 5-year history of daily returns. Should the volatility implied by option prices be used instead? If so, what estimate should be used if option prices are not available for a particular asset (equities namely)?

For most investment funds it will not be possible to calculate the volatility via an option price, as there is not an option for every asset type.

15. Do you think compensatory mechanisms for unforeseen methodological faults are needed? If yes, please explain why.

We deem compensatory mechanisms essential. As the proposed approaches do not deliver realistic figures for any of the funds, assets etc. on the market, there must be a possibility to overwrite figures that are not realistic and would thus give a misleading picture to the customer. Against this background, the flaws of the proposed methodology are more than obvious.

16. Do you favour any of the options above? If so, which ones? How would you ensure that the information in the KID remains comparable for all products?

The possibility to adapt the numbers as mentioned in point 5.6. in the un/favourable scenario is at least considered to be practicable.

17. Are there any other compensatory mechanisms that could address unforeseen methodological faults? If yes, please explain the mechanism; explain how it ensures that scenario information in the KID allows investors to compare PRIIPs, and explain how the information for similar products from different manufacturers remains sufficiently consistent.

18. What are your views on the use of a simplified approach such as the one detailed above, instead of the use of probabilistic methodologies with more granular asset specific requirements?

The simplified approach is way easier to implement. If the growth rates are predefined by the national competent authorities, the PRIIPs was comparable, too, lacking any cherry picking.

The paper mentioned in footnote 20 (page 28) contains a table (page 115/116) showing different growth rates for the same assets (from different sources). This seems to be another argument for the simplified approach as concerns comparability. The downside may be that the same growth rate for one asset class in all products could lead to unexpected results e.g. for minimum variance equity funds.

19. Do you consider the use of a single table of growth rates appropriate? If no, how should the methodology be amended?

We consider it to be useful to have a fixed table of estimated growth rates provided by the regulator as there are two advantages for the implementation:

First, the comparability of investment funds is granted and second, the disproportionate effort concerning data availability in order to manage estimation of dividends for all possible country/sector-combinations as well as estimations of share-buy-back-rates does not arise.

We therefore propose a correction within the formula in Annex IV point 7 (on page 58) to compensate the thereby generated equability of different stock markets: expected growth g should be adjusted with an asset-class specific matching coefficient a. This coefficient a should be proportional to the VEV. This proposal would accommodate the fact that asset-classes with a higher volatility will (according to theory as well as empiricism) also show a higher performance.

20. More generally, do your views about the use of a probabilistic methodology vary depending on the type of product (e.g. structured products vs non-structured products, short-term vs long-term products)? For which type of products do you see more challenges to define a probabilistic methodology and to present the results to investors?

n/a

21. Do you think these alternative approaches should be further assessed? If yes, what evidence can you provide to support these approaches or aspects of them?

Regarding the proposed use of the Sharpe ratio (option b on page 28), we want to point out that if the Sharpe ratio was used, it would be necessary to determine for which time span the risk adjusted performance is used, i.e. for one year. Moreover, a clarification regarding the recommended holding period would be useful. Nevertheless, although the use of the Sharpe ratio would be relatively easy to implement, there are certain reservations against the risk-free rate – as already expressed above in our answer to question 9 – which concern, among others, the chosen rate or the time horizon.

22. Are there any other approaches that should be considered? What evidence are you able to provide to support these other approaches?

The first of the alternatives provided by the JC (point 5.2.) is to be seen as extraordinarily complex to implement, especially regarding the data sets. It is also not clear, how often the calculation should be conducted, i.e. yearly or on an ongoing basis. As the ESAs themselves acknowledge the possibility of further questions, we want to stress that sub-funds are also a topic that would have to be examined in a separate manner. Moreover, it is obvious that in the proposal given by the ESAs a certain arbitrariness could be fostered, which would lead to the negative effects of a lack of comparability (due to estimations) as well as a lack of correlation.

The criticism also aims at the fact that by applying the single table pursuant Cornish-Fisher as basis (first summand), the formula always uses the classic expected value (weighted sum).

By way of an example, we want to mention the comparison of two stock funds: a Euro-Stock fund and a biotech-stock fund would show the following exemplary data:

	Euro-Stock fund	Biotech-Stock fund
g (regulatory requirement)	5% p.a.	5% p.a.
VEV	14% p.a.	28% p.a.
Unfavourable Perf Scen	-8% p.a.	-13% p.a.
Moderate Perf Scen	4,9%	4,8% p.a. (!)
Favourable Perf Scen	9% p.a.	12% p.a.
g+a (matching coefficient)	5% p.a.	6,5% p.a.
Unfavourable Perf Scen NEW	-8% p.a.	-12% p.a.
Moderate Perf Scen NEW	4,9%	6,3% p.a.
Favourable Perf Scen NEW	9% p.a.	13% p.a.

The proposed model – regulator-given table plus VEV-matching coefficient would have the advantage that technology-oriented stock funds (environmental engineering, biotech, green energy, artificial intelligence etc.) could compensate the disadvantage of higher volatility at least partially by means of an actually existing volatility rate. Otherwise, retail customers could be advised not to invest into seminal, but more volatile stock markets based on the focus on the unfavourable and the moderate scenario in the PRIIPs KID.

The calculation of the matching coefficient could be done by applying the following formula: a = Max(0, (VEV-0,16)*0,125). For example, if VEV = 28%, then this would lead to a = (28%-16%)*0,125 = 1,5%. Hence, instead of g*T, the formula would be adjusted to (g+a)*T.

Moreover, it would be useful if the regulator would foresee similar possibilities regarding the expectation of alternative investments by incorporating a similar matching coefficient.

23. Do you think illustrative scenarios should be included in the KID as well as probabilistic scenarios for structured products?

n/a

24. If not, do you think illustrative scenarios should replace probabilistic scenarios for structured products?

n/a

25. Do you agree with this approach to define PRIIPs which would show illustrative performance scenarios using the existing definition of Category 3 PRIIPs? If not, why not? Where relevant, please explain why this approach would not be appropriate for certain types of Category 3 PRIIPs?

n/a

26. Would you be in favour of including information on past performance in the KID?

From our point of view, there is no additional benefit in including past performance information into the KID because if past performance is to be included, at least the very same provisions that are already in place for UCITS KIID should be used. Furthermore, such inclusion would just trigger and additional lack of consistency and comparability, particularly due to different rules for category 2 PRIIPs vs. category 1 and 3 PRIIPs. Moreover, the display of the data would become a big challenge against the background of the existing restriction to three pages for the PRIIPs KID. Hence, it can be expected that more questions would arise and additional information to explain past performance data would need find their way into the KID, such as the explanation regarding the difference between past performance and forward-looking scenarios. Consequently, the clarity and comprehensibility of the document would further decrease.

27. Would your answer to the previous question be different if it were possible to amend Article 6(4) of the PRIIPs Regulation?

No, the information is not necessary in the PRIIPs KID.

28. Do you think that it can be more appropriate to show past performance in the form of an average (as shown in the ESA proposal for consumer testing) for certain types of PRIIPs? If so, for exactly which types of PRIIPs?

We do not consider this as an appropriate solution and want to stress again that if the inclusion of past performance was compulsory, it should be the case for all PRIIPs and not only for e.g. funds with a recommended holding period of over x years.

29. Do you have any comments on the statement that would supplement the display of past performance (e.g. with regard to the presentation of costs which are not included in the net asset value (NAV))?

No.

30. Are you of the opinion that an additional narrative is required to explain the relationship between past performance and future performance scenarios?

If past performance should be included, yes. An additional explanation would be necessary to explain the main differences between the potential outcomes and the historical values (as also mentioned above answer to question 26).

31. Do you see merit in further specifying the cases where the UCITS/AIF should be considered as being managed in reference to a benchmark, taking into account the provisions of the ESMA Questions and Answers on the application of the UCITS Directive?

For the sake of consistency and coherence, it may make sense that the relevant provisions for UCITS/AIF-KIIDs are extended to the new PRIIPs-KIDs.

32. Do you see the need to add additional provisions for linear unit-linked insurance-based investment products or linear internal funds?

n/a

33. Do you agree that a fixed intermediate time period / exit point should be used instead of the current half the recommended holding period to better facilitate comparability?

No, we do not agree. A calculation using half the recommended holding period is more appropriate and makes more sense.

34. In this case (of a fixed intermediate time period), do you agree to show costs if the investor would exit after 5 years for all PRIIPs with a recommended holding period of at least 8 years? Or do you prefer a different approach such as:

o Applying this approach (i.e. showing also the costs of exit at 5 years) only for PRIIPs with a longer recommended holding period, for example at least 10 years

o For longer term products (e.g. above 15 years) showing exit costs at a different fixed time period (e.g. 10 years instead of 5 years)?

See answer to question 33 above.

35. Do you think it would be relevant to either (i) use an annual average cost figure at the recommended holding period, or (ii) to present both an annual average cost figure and a total (accumulated) costs figure?

In principle we remain neutral on this one but, in any case, further explanations of the selected figure would be necessary.

36. Do you think that it would be helpful, in particular for MiFID products, to also include the total costs as a percentage of the investment amount?

Any improved harmonization between PRIIPs and MiFID information would highly be appreciated. From a practical perspective, calculations have to be made for and via the EPT anyways. Hence, different calculation principles cause different outcomes that must be displayed (and explained), thus even more confusion will be caused for the retail investor.

37. In this context, are there PRIIPs for which both performance fees and carried interests are applied?

n/a

38. Do you agree with this analysis from the ESAs? If yes, what are your views on the extent to which fees related to the management of the underlying real estate assets, i.e. the properties themselves, should be taken into account in the calculation of the cost indicators?

Generally speaking, we are in favor of harmonizing the cost indicator for real estate funds regarding the PRIIPS KID. To our mind the actual management of properties is not specific to the management of an investment funds in that it goes beyond the various activities connected with the collective investment of capital raised. In so far as the actual management of immovable property is intended to preserve and build up the assets invested, its objective is not specific to the activity of a special investment fund but is inherent in any type of investment (this distinction has already been made by the ECJ (C-595/13), reference 78 regarding real estate investment funds).

We do not agree with the analysis from the ESAs.

In our opinion the consideration of actual management fees (costs) of the underlying assets, which means of the real estate assets themselves, distorts the cost indicator and impairs the comparability instead of increasing it.

The actual management fees for real estate assets borne by the owner may vary significantly due to various reasons. For example (i) depending on national leasing law or negotiating power the owner/landlord of a building may charge the management fees (in total or partially) to its tenants and no - resp. reduced - management fees apply; (ii) in case of vacancy management fees are borne by the owner/landlord; (iii) the complexity of the management and therefore, the costs for the management may vary depending on the type of asset (single-tenant, multi-tenant, residential, office, etc.).

These are only a few reasons why actual management fees for real estate assets are highly volatile, depend on various parameters in terms of location, type of assets, etc., and are often not controllable by the fund manager. Consequently, a statement of these costs shows a snapshot of a current situation without validity for future costs. To our understanding the costs presented in PRIIPS shall enable the investors to understand the effect of aggregate and total costs of a product on the performance over the holding period and, in this respect, to compare different products.

The consideration of real estate management costs in this cost calculation does not support this approach but increases the inconsistency between the cost indicators of the different products and creates more confusion amongst the investors.

There is a clear distinction to be made between the management service costs charged by the management company (including delegated management services by third parties) and the costs which belong to the actual management of the properties of the funds. Actual management costs of the properties are costs which do not have to be included in the cost indicator. These costs are costs in connection with the utilization of properties and have to be borne by the investors and are directly reducing the yield of the investment.

39. Do you agree with the ESAs' preferred option 3 to revise the cost tables?

No.

40. If not, which option do you prefer, and why?

We prefer option 2, in doing so, we also refer to using the half bid/ask spread as still quite a practicable methodology. This can be explained by the fact that option 2 has the advantage that there is not a fixed reference value.

In this context we also appreciate the content of point 15 on page 101, which describes the method that would be easy to implement and supports our preference of option 2:

"*OTC transactions*

15. Where the manufacturer has obtained executable prices from multiple counterparties or where live executable prices are available, implicit transaction costs shall be measured by reference to such prices. In any such case, the number of units traded shall be multiplied by either the reference price of the instrument subtracted from the execution price for each purchase undertaken by the PRIIP or the execution price subtracted from the reference price of the instrument for each sale undertaken by the PRIIP;"

We want to mention that the following points 16ff are to be seen very critical and practically not feasible.

41. In particular, do you think that the proposed changes to the presentation of the impact of costs on the return in percentage terms (i.e. including reduction in return before and after costs) is an improvement on the current presentation?

We are of the opinion that the display of the returns before and after costs would be an improvement.

42. Do you have other comments on the proposed changes to the cost tables?

n/a

43. What are your views on the appropriate levels of these thresholds? Please provide a justification for your response.

The threshold shown in chapter 12.7.1., option 1, point 22 on page 97 should be higher for practical and market-specific reasons.

44. If UCITS would fall in the scope of the PRIIPs Regulation, do you agree that the coexistence of the UCITS KII (provided to professional investors under the UCITS Directive) and the PRIIPs KID (provided to retail investors under the PRIIPs Regulation) would be a negative outcome in terms of overall clarity and understandability of the EU disclosure requirements? Are you of the view that the co-legislators should therefore reconsider the need for professional investors to receive a UCITS KII, as the coexistence of a PRIIPs KID together with a UCITS KII (even if not targeted to the same types of investors) would indeed be confusing, given the differences in the way information on costs, risks and performance are presented in the documents? Alternatively, are you of the view that professional investors under the UCITS Directive should receive a PRIIPs KID (if UCITS would fall in the scope of the PRIIPs Regulation)?

We agree that a future coexistence of both investor information documents would be detrimental to the overall clarity and comprehensiveness of EU disclosure requirements. Moreover, professional investors do not need any of the documents by definition. There is absolutely no use in including UCITS for professional investors into the PRIIPs regulation and thus inventing another duty that would (again) concern management companies exclusively. We do not see any sense in that and hence reject any regulation that does not aim at all PRIIPs in the same manner.

45. What are your views on the issue mentioned above for regular savings plans and the potential ways to address this issue?

n/a

46. Do you agree that these requirements from Article 4 should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIFs?

n/a

47. Do you agree that this requirement should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIF?

n/a

48. Do you agree that these requirements should be extended to all types of PRIIPs, or would you consider that they should be restricted to the Management Company of the UCITS or AIF?

n/a

49. Do you have any comments on the proposed approaches in relation to the analysis and proposals in this Section, and in particular on the extent to which some of the abovementioned requirements should be extended to other types of PRIIPs?

n/a

50. Do you think this proposal would be an improvement on the current approach?

n/a

51. Do you envisage significant practical challenges to apply this approach, for example for products which allow the investor to choose between a wide range or large number of options?

n/a

52. Do you see any risks or issues arising from this approach in relation to consumer understanding, for instance whether the consumer will understand that other combinations of investment options are also possible?

n/a

53. Do you think this proposal would be an improvement on the current approach?

n/a

54. Are there other approaches or revisions to the requirements for MOPs that should be considered?

n/a

Kind regards,

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