



Brussels, 13 January 2020

## **EACB Answer to Joint Consultation Paper concerning amendments to the PRIIPs KID**

### **January 2020**

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## Introduction

The EACB welcomes the opportunity to respond to the ESAs' joint consultation paper on changes to the key information document (KID) for PRIIPs, which was published on 16 October 2019. This is particularly important since we have noted that distributors have been excluded from stakeholder meetings with the ESAs during 2019 with respect to proposals on performance scenarios and discussions on transaction cost methodologies. The outcomes of these discussions were used in order to prepare the consultation paper with the intention of consumer testing to be carried out by the European Commission.

Despite not being involved in creating the actual structure of the PRIIPs, distributors are in direct contact with the retail investor and can understand whether the regulation on the PRIIPs KID delivers the required investor protection as originally intended. Our greatest concern is whether clients can understand the information in the KID, which at the moment is very challenging also for the people working in financial markets (especially regarding the performance scenarios and transaction costs). Our members' experience is that due to misleading scenarios, a part of their workforce does not feel ethically comfortable to explain unrealistic scenarios to clients.

We thus appreciate the opportunity to provide our input on the proposed Level 2 amendments to the PRIIPs Regulation, but think it is very unfortunate that the Level 1 Regulation is not being consulted on at the same time. It is clearly understood of course that the ESAs powers and responsibilities lie within the Level 2 Regulation. However, it is not efficient (and goes against the Commission's Better Regulation Agenda) to propose Level 2 amendments before addressing possible issues of the Level 1 Regulation.

That said, we applaud the initiative of the ESAs in highlighting certain Level 1 issues to the European Commission such as the scope of bonds within the PRIIPs Regulation. The ESAs joint supervisory statement (JC-2019-64) dated 24 October 2019 provides a welcome clarification on which bonds are considered within scope of the PRIIPs Regulation and which are not. We also appreciate that the ESAs consider that their statement provides clarification only to a certain extent, and propose that Level 1 changes would still be required in order to ensure consistent application amongst national competent authorities (NCAs) of the provided guidance.

## General comments

Prior to providing our answers to the consultation queries, we would also like to allude to the part in section 2.2 of the consultation paper which states that: *"As things stand, in the absence of legislative changes, from 1 January 2022, UCITS will be required to prepare a PRIIPs KID and UCITS KIID. In view of this, the European Commission are expected to table legislative proposals in due course to address the requirements that would apply to UCITS from 1 January 2022 onwards."* We note that the inclusion of relevant UCITS provisions within PRIIPs is one of the main goals behind the consultation, as well as, one of the ESAs' major concerns.

We strongly believe that the proposed inclusion of UCITS provisions in PRIIPs might lead to an even more complicated legal framework for PRIIPs, when this could simply be resolved through appropriate cross-references. Please find the reasoning behind our concerns below:

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- **We wish to avoid a situation where a PRIIPs KID exists alongside a UCITS KIID for the same financial product** (whether for retail or professional clients). Our opinion is that any changes proposed by the ESAs should not lead to a situation where the KIID will no longer be applicable to retail investors (if the case) yet remain applicable to professional investors. If this situation is not avoided, then manufacturers of UCITS with a broad potential target market identification (i.e. both professional and retail investors) will still have to produce two different information documents (UCITS KII and PRIIPs KID) besides each other. The two documents differ with regard to the underlying methodologies and calculations, for example:
  - Transaction costs within the fund: For UCITS, transactions costs within the fund (so called implicit costs) are not included, whereas in PRIIPs they are. Because of this inconsistency, retail investors might be confused when two information documents exist beside each other; and
  - Risk indicator: Although they appear to be very similar (i.e. a scale of 1-7), risk indicators within UCITS SRRI and the PRIIPs SRI differ fundamentally on a methodology level. The PRIIPs Regulation risk indicator can be seen as a 'step up' from the UCITS' SRRI. The SRI (PRIIPs) includes inter alia credit risk and assesses market risk (with a more complex Cornish Fisher methodology).One proposal to avoid such situation would be to exempt or allow an opt-out of professional investors from receiving the KID, as they do not require such documentation given their knowledge and experience. We also propose that for financial instruments which fit within the scope of MiFID II - yet are also considered PRIIPs and/or UCITS products - that the manufacturer and distributor should present cost and charges information to retail investors in accordance with MiFID II, rather than the investor document regulations under the PRIIPs and UCITS regulations; and
- **We also doubt whether the KID could be prepared within the maximum limit of 3 pages following the proposed additions**, and ask that the ESAs look into this before issuing their final report.

For both distributors and manufacturers, all the above leads to operational impact and risks in the case that two documents need to be produced and provided to separate client groups (i.e. professional and retail investors). And ultimately, the technical issues and potentially lengthy document also threaten to confuse (retail) investors in contradiction to the Commission's intention to promote confidence in retail investors to invest in EU capital markets.

We also wish to bring to the ESAs' attention the '**Member State option**'. It should be noted that the authorised languages for information documents can differ under PRIIPs and UCITS between the Member States. For example, in the Netherlands a situation exists where for the UCITS KII English and Dutch versions are both authorised languages, whereas under PRIIPs a KID in the Dutch language is mandatory, i.e. the Netherlands has not used its 'Member State option' under Article 7 of the PRIIPs Regulation to allow for other languages.

The ESAs should be aware of the possible differences in implementation between Member states and the possible negative side-effects this might entail. If a member state chooses not to use the Member State option, this might be a barrier to the freedom of capital movement in general and could shrink the range of investment options for retail investors.

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## Responses to 'Section 2: Context and approach to the review'

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

Our members are very much aware of provisions in the PRIIPs Regulation that hinder the use of digital solutions for the KID but consider that these can only be fundamentally addressed through a Level 1 review. One relevant example is the provision to physically distribute the PRIIPs KID as default option according to Article 14 (2)(a) of the PRIIPs Regulation. Electronic distribution (with opt-out possibility) seems a much better default option for most (retail) clients particularly for professional clients in the case that they shall remain under the scope of receipt of the KID.

Another provision, that is a barrier to digitalisation, is Article 14 (5)(b) of the PRIIPs Regulation. According to this the retail investor can choose whether to receive the information on paper or via a website. The possibility of receiving information on paper means a media disruption in online business.

It is clear that the PRIIPs Regulation contains a priority for the paper-based provision of KIDs. This high consumption of resources is incomprehensible in view of increasing digitisation and the sustainability goals pursued by the EU. We believe it is Level 1 legislators that should also act here and provide for the electronic provision of documents as an equal alternative.

### **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?**

We agree with such proposal on two grounds:

- (i) Many UCITS and AIF funds are distributed through digital systems and other products are now also becoming digitalised, e.g. PEPP KID has a QR code; and
- (ii) We would like to stress that extraction of the information from the PRIIPs KID is essential for distributors in the light of MiFID II cost transparency. In current practice, most distributors rely on data-vendors to extract transaction cost information from PRIIPs. Manufacturers on their side, distribute transaction cost information through standardised templates, e.g. the European MiFID Template ('EMT'). This is costly for all parties involved: distributors, manufacturers and consumers. In the German market, formats other than EMT exist with which data is passed on from the manufacturers to the distributors. The transfer of data is carried out by central service providers. However, the rationale remains the same: the content of the KID is not suitable for IT-based extraction.

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**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?**

We repeat the concerns in our introduction regarding timing and procedure, in that we believe that any changes to the KID should be implemented after all possible Level 1 amendments are considered. Therefore, we prefer a simultaneous implementation between Level 1 and Level 2 at the beginning of 2022, rather than a phased in approach before the end of 2021. Undergoing several adjustments of the KID is challenging and confusing to both firms in scope and their clients. However, the

Should a meaningful revision of the PRIIPs rules require time extending beyond the beginning of 2022, this prolongation should be taken in the interest of a reasonable result and considering the extension to the UCITS KIID derogation deadline. Legislators should also consider whether grandfathering provisions would be relevant in the case of PRIIPs that are already commercialised.

Furthermore, we propose that changes are only considered by the ESAs when they can be part of regular planned (at least yearly) regulatory reviews and revision of KIDs. It should be avoided that the content of the KID is subject to a continuous process of amendments followed by other amendments.

**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?**

As referred to in our answer to Question 3, we prefer one consolidated step to be taken at the beginning of 2022 including Level 1 amendments. That said, we think it would be helpful to make an amendment to include the model text recommended in 'Annex 6 - Joint ESA supervisory statement concerning the performance scenarios in the PRIIPs KID' enclosed with the ESAs' final report (JC 2019 6.2) published on 8 February 2019. This helps at the very least provide a risk warning for clients in the KID, which implies that scenarios can be too optimistic and that customers must not fully rely on the information displayed in these scenarios. Should a meaningful revision of the PRIIPs rules require more time than beginning of 2022, this prolongation should be taken in the interest of a reasonable result and considering the extension to the UCITS KIID derogation deadline.

**Responses to 'Section 3: Overview of the consultation process and next steps'**

**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.**

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More generally, the EACB reiterates its belief that the biggest issue pending is the missing link between this consultation and the review of the PRIIPs Level 1 Regulation. In addition hereto, we would also expect an initiative of the ESAs in order to avoid a duplication of similar but not equal obligatory pre-contractual information requirements pursuant to UCITS (KII) and PRIIPs (KID).

In further detail, we also list find hereunder the material issues which are not addressed in this consultation paper and beyond our comments in the 'Introduction' and 'General Comments'. We understand that most of the below proposals are better suited to a Level 1 review, but we nonetheless wish to highlight them as per the below:

**1) Comprehensive review, including Level 1**

Existing problems cannot only be solved by a Level 2 review. There must be a comprehensive review, including all relevant regulations. Against the background of Article 33 (1) of the PRIIPs Regulation it may have been a political decision to limit the review to Level 2 provisions. However, this restriction will lead to ongoing errors with the KIDs.

**2) Scope of the PRIIPs Regulation (Level 1)**

The scope of the PRIIPs Regulation should be clearly defined. Concerning simple bonds with make-whole clause, the ESAs gave guidance (JC-2019-64) in order to reduce legal uncertainty. However, in the context of the review, it is necessary, that clarifications are given at legislative level.

**3) Adaptions with respect to funds (Level 1)**

This issue has already been alluded to in our answer to Question 45, but we would like to add that with the latest extension of the PRIIPs Regulation to funds, the Level I requirements must also be put to the test. The PRIIPs Regulation is clearly not tailored to funds, which becomes clear in some provisions (e.g. the regulation on savings plans in Article 13 (4), which does not fit in with the mass-produced fund savings plan).

**4) Adjustment of the Level 2 requirements for OTC derivatives (Level 2)**

The consultation paper does not deal with OTC derivatives, although the ESAs themselves have established in their Q&A that the existing requirements do not fit and that the KIDs created on the basis of the legal requirements may create a false understanding of the product among customers. For this reason, the ESAs have made adjustments to the legally required text modules in their Q&A. We urge that these modifications be also included in the Level 2 texts; in addition, further need for adaptation should be examined. For example, the calculation of performance and costs on the basis of a nominal value of €10,000 is of little practical relevance, when in practice, nominal values of €500,000 plus are usually agreed.

In addition, the distinction with Exchange Traded Derivatives (ETDs) should be abandoned. At Level 2, generic KIDs for OTC derivatives should be confirmed accordingly. Logically consistent, the performance scenarios for OTC derivatives, which

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on the current basis lead to partly absurd and confusing results for investors, would then also have to be abandoned.

#### **5) Historical costs (Level 2)**

According to Annex VI, No 83 of PRIIPs Commission Delegated Regulation (EU) 2017/653 (PRIIPs-RTS), information on the ratios applicable during previous years/periods must be published in the place indicated in the KID as a general source of further information available to the investor on request.

The purpose of publishing ratios for previous years/periods in accordance with Annex VI, No. 83 PRIIPs-RTS is, among other things, to make calculations based on ex-post figures verifiable. This follows from Annex VI, No. 81 and 82 PRIIPs-RTS. According to No. 81, the ratios are in principle calculated at least once a year on an ex-post basis. No. 82 PRIIPs-RTS further states that current cost calculations, which the PRIIP manufacturer considers suitable for this purpose, are to be used as the basis for the ex-post figures, whereby the figures may in principle be based on the costs stated in the profit and loss account for the PRIIP published in the last annual or semi-annual report.

For the majority of structured securities, the KIDs are recalculated regularly, i.e. at relatively short intervals, or even daily for a large number of structured securities, and, if changes need to be made, revised and republished. When calculating the costs for these products, the daily costs are taken into account in each case, so that the publication of "historical" cost ratios, on the basis of which the respective costs are calculated in the KIDs, is irrelevant and should be done away with.

#### **6) Competent authority Article 8 (3)(a) PRIIPs Regulation (Level 1)**

Article 8 (3)(a) of the PRIIPs Regulation requires that the KID must provide information about the competent authority of the PRIIP. The PRIIPs Regulation does not contain a definition of the competent authority. As a general rule the competent authority should be the national competent authority of the Member State, where the PRIIP manufacturer is established (irrespective of whether that PRIIP manufacturer carries out activities across borders). This view has been confirmed by the Commission in recital 22 in the Guidelines on the application of the PRIIPs Regulation.

Since some supervisory authorities in host Member States have challenged PRIIPs KIDs, which were prepared by manufacturers established in other Member States and asked the manufacturers to amend the PRIIPs KIDs, it should be clarified that supervisory authorities in host Member States may not require changes to KIDs whose manufacturer is established in another Member State.

#### **7) 10,000 Euro or equivalent in another currency (Annex VI No. 90/91 PRIIPs Delegated Regulation) (Level 2)**

In the case of PRIIPs denominated in non-euro currencies, an "amount of similar magnitude" to EUR 10,000 and which is cleanly divisible by 1,000 is to be used for the calculation of performance scenarios and cost presentation. It remains, however, in

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our view unclear whether EUR 10,000 must be converted into the foreign currency at the respective exchange rate for foreign currency products.

We recommend, that the reference amounts should be fixed in the individual currencies so that PRIIPs denominated in the same currency can be compared as far as possible. These fixed reference amounts could be included directly in the revised PRIIPs Delegated Regulation, for example in a table. This table could then be updated, where necessary, and be published on the websites of the ESAs.

## Responses to 'Section 4: Consumer testing'

### **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 comments on future performance scenarios can be referred to in our answers to the questions of Section 5 of the consultation.

In addition, we would like to advise the usefulness of testing the present KID against a simpler version of an information document such as the KIID or new PEPP KID. We also have the impression that the consumer testing is being implemented in such a way that does not challenge the current issues in the present Level 1 text which we believe should be taken into consideration.

## Responses to 'Section 5: Future performance scenarios'

### **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?**

We believe that intermediate scenarios are not necessary.

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

Our opinion is that a stress scenario is also not necessary in the presentation of future performance scenarios. It would be simpler for clients if there could be only 2 or maximum 3 scenarios.

If the stress scenarios should nevertheless be adhered to, at least a uniform calculation method would have to be applied, i.e. the same drift should be applied in all scenarios.

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

Whilst we think that the way the reference rate is specified is indeed realistic we wish to highlight that the basic problem remains that customers shall still get the impression that such figures presented in performance scenarios are real outcomes rather than hypothetical scenarios. It would be necessary to state clearly in the KID, that these figures are only an indication of the future and may not materialize in real life.

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

The ESAs correctly recognise that the proposed probability-based approaches are unlikely to produce plausible results for all products. Instead of abandoning the approach that has been identified as not leading to plausible results, corrections to the results are proposed. This should be rejected for several reasons:

- corrections lead to -as correctly recognised by the ESAs - insufficient comparability;
- The corrections only mitigate or conceal the problems of the probability-based approach. However, the problems are not eliminated;
- The corrections eliminate outliers upwards or downwards. However, this can make the figures look even more realistic for the investors, making it even more likely, that they might draw inaccurate conclusions; and
- The probability-based approach would be taken ad absurdum if probability-based values were first calculated on the basis of a complex procedure and then modified by a corrective.

**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.**

Please refer to our answer to Question 15.

**Responses to 'Section 6: Alternative approach to performance scenarios - use of illustrative scenarios'**

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

We advise that only one type of scenario approach should be presented to clients, as including both illustrative and probabilistic scenarios would be confusing to (retail) clients.

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## Responses to 'Section 7: Inclusion of information on past performance'

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

Yes, but only in products where this would be appropriate such as UCITS and AIF funds. The inclusion of past performance would not make sense for non-linear products.

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

The consultation paper proposes several measures that would lead to an expansion of the content of the KID. These additions can only be implemented, if the restriction of KIDs to three pages is abandoned. At the same time, having a KID with an excessive number of pages does not lead to the objective of simplification. The ESAs and the Commission should reach a decision behind the way forward on the page limit under Article 6(4) of the PRIIPs Regulation before taking decisions on certain proposed amendments that will increase the page count in the 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?

Our opinion is that such proposal is not appropriate as it adds to the current complexity.

### 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))?

Our opinion is that such statement could help reduce the complexity of the KID.

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

We believe that an additional narrative could be helpful for customers in order to clarify the difference between the real past performance of the product and performance scenarios, in that the first one is real and the last one is hypothetical.

### 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?

No, we do not think further specifications are required.

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

No, we do not think further provisions are required.

**Responses to 'Section 8: Costs'**

**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?**

We advise that only a one-year and recommended holding period (RHP) should be used in the cost disclosures. This reduces the amount of information being presented to retail investors.

**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?**

If the product was a financial instrument within the meaning of MIFID II, the presentation of cost should be dispensed in the KID.

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

We note the ESAs request for stakeholder feedback on whether they should consider that: (1) the benefits of a more principle-based transaction cost methodology approach ('type 2' approach) outweigh the drawbacks; and (2) how to best draft the corresponding requirements should this approach ultimately be preferred.

We confirm that we are in favour of such a 'type 2' approach. The current transaction cost methodology is based on partially unsuitable assumptions that can ultimately result in misleading information to retail investors. The current methodology systematically ensures that market movements (so called slippages) are included in the calculation of transaction costs, something that has received a lot of criticism from the industry. The inclusion of these market movements means that transaction costs that will be disclosed to retail investors are in many cases overestimated or underestimated. Retail investors therefore get a confusing and potentially misleading outcome.

The current methodology for calculating transaction costs thus yields confusing and unreliable figures: transaction costs are either over- or underestimated on a constant basis. In some cases this can result in negative transaction costs that are presented to retail investors. This would mean that investors would be rewarded in gross performance for the 'negative costs' that a fund manager makes for its portfolio management. Although

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this is theoretically possible through the efficient conduct of a fund manager, it will generally be necessary to pay for the portfolio management tasks of a fund manager (buying and selling securities). Negative costs for the above services are therefore not easy to explain to retail investors. We therefore welcome the proposal to set the minimum amount of transaction costs within PRIIPs to 0.

That said, we do not believe that changes to the current methodology solve all the above issues. Under option 2, a more general derogation from a default methodology would allow for the use of alternative approaches (e.g. based on third party data), which is favoured because it leaves much more flexibility to both distributors (that are forwarded to PRIIPs RTS in the light of MiFID II costs transparency) and manufacturers (that need to prepare a KID). The trade-off might be that information provided is less consistent or comparable to retail investors. But even under option 1, we believe that the transaction cost figures are not fully consistent and comparable.

**Responses to 'Section 9: Amendments arising from the end of the exemption in Article 32 of the PRIIPs Regulation 44'**

**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)?**

Please note our answers to the three sub-questions below:

- (i) We agree that the potential use of two different disclosure documents for the same product (PRIIPs KID and UCITS KIID) will cause severe clarity issues. Besides the different lay-out, the information documents also vary in content, especially the risk-indicator both making use of a scale of 1-7, but where the calculation methods are fundamentally different. We should avoid the situation that a third document is needed to explain the differences between the PRIIPs KID and the UCITS KIID. Furthermore, the obligation to provide different disclosure documents to different kind of investors (retail vs professionals) will cause operational risks for the investment firms selling and advising on investment funds;

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- (ii) We are of the opinion that the UCITS KIID for professionals is of limited use. Professional investors have the knowledge and experience to make their own assessments of the risk of products without the need of extra disclosure documents, such as the UCITS KIID or the PRIIPS KID. Therefore, in our opinion any obligation to provide a disclosure document to professionals should be cancelled once the UCITS exemption period expires; and
- (iii) For consistency with the above and also considering that the Regulation is applicable to retail-only, we consider that the PRIIPS KID should be solely made available to retail investors.

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

First of all we believe that the PRIIPs KID is primarily focused on products that involve some component of investment. And even if a retail savings plan might involve investment products, these usually consist of multiple underlying investment products (that need to disclose, if in PRIIPs scope, a KID). Therefore, a specific (additional) KID requirement is not considered desirable for savings plans. If there would be any intention to include savings plans, we would urge the ESAs to do so only in future planned reviews of the PRIIPs regulation and delegated acts (see our answer to question 3 and 4).

If these requirements on savings plans should proceed we would expect the definition of a "savings plan" to be further explained by the ESAs. Provided such further explanation on the definition of a "savings plan", we would welcome Section II, Question 2a of the ESMA Q&A on UCITS to be implemented in the PRIIPs Q&A. UCITS investors are currently entitled through this provision in the ESMA Q&A to receive a UCITS KIID when changes are made to the savings plan. In the PRIIPs regime, it is mandatory to provide an updated PRIIPs KID to investors whenever the PRIIPs KID is updated. We would welcome the alignment of this requirement of the UCITS KIID in the PRIIPs KID. Investors would thus be provided with a KID at the beginning of the savings plan and whenever there are changes made to this savings plan by the customer; and the KID should not be required solely because the KID has been updated.

We wish to highlight in this context that the legislator has created its very sensible regulations for funds to provide essential investor information (wAI) for savings plans. These take into account, that fund savings plans are a mass retail business. For example, one big German bank from our members has a total of approximately 4.5 million savings plans in its portfolio. Electronic communication was only agreed with just under 21 percent of the securities account holders concerned.

The system also takes account of the fact, that the investor only makes an investment decision when concluding a savings plan. This should also be reflected in the PRIIPs

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Regulation, if it is also applicable to funds in the future. The PRIIPs Regulation also makes clear at several points, that the KID should be the basis of the investment decision. See the following examples:

- Recital 15: "Retail investors should be provided with the information necessary for them to make an informed investment decisions and compare different PRIIPs;..."
- Recital 17: "The key information document should be drawn up in a standardised format which allows retail investors to compare different PRIIPs, ...".
- The legislative intent is also clear from the Level 2 text (PRIIPs Commission Delegated Regulation (EU) 2017/653), which in Article 17 sets out detailed requirements regarding the time at which the KID is made available. Recital 24 reads as follows: "The key information document should be made available to retail investors sufficiently prior to their investment decision, so that they can understand the relevant information about the PRIIP and incorporate it into their decision-making. ..."

In conclusion: In the case of savings plans, the customer makes an investment decision only when the contract is concluded, but not when the individual savings instalments are executed. Once the savings plan has been completed, the customer has the PRIIP in his account and can therefore see how the product is developing (performance) and what costs are incurred (annual cost reporting). If the market changes, he can also see how the product reacts to risk factors. Therefore we see no need to make the KID available again after the conclusion of the contract/ execution instalments.

In the case that the legislator deems it necessary to provide the KID also during the term of the savings plan, it should amend the current provision (Article 13 (4) PRIIPs Regulation) in such a way that the renewed provision of the KID is only necessary in the event of a 'substantial change' with respect to savings plans. In addition, the legislators should also change the definition of "first transaction after" (in line with the Q&A UCITS that refers to "new subscription form").

In the above context, it should also be sufficient to make the relevant KID available to savings plan customers once a year (e.g. with the annual deposit statement/ ex post cost reporting, or by making it available on the website). This would enable the institutions to combine the expensive mailing of the KID with other recurring information.

## Responses to 'Section 10: PRIIPs offering a range of options for investment'

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

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Some of our members do not consider this proposal to be an improvement. It might even be considered to be against the MiFID II rules, because clients may be given the idea that the four options being proposed are suitable for them without having any proper discussion with them on their objectives and preferences.

**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?**

Please refer to our answer to Question 50.

**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?**

Please refer to our answer to Question 50.

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

We do not consider this proposal to be an improvement.

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

We do not envisage any other approaches or revisions to the requirements for MOPs.

**Contact:**

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

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