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Call for advice on PRIIPs: ESA advice on the review of the PRIIPs Regulation

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1. Executive Summary

This Report presents the European Supervisory Authorities' (ESAs) technical advice to the Commission on Regulation (EU) No 1286/2014 (PRIIPs Regulation)¹ following a request received from the Commission on 27 July 2021². It will serve as input to the Commission's work to develop a strategy for retail investments and to make appropriate adjustments to the PRIIPs legislative framework.

This final advice follows a Call for Evidence launched by the ESAs on 21 October 2021³.

This Report contains two subsequent Sections:

- Section 2 explains the background and approach.
- Section 3 provides the substantive content of the Report, including the ESAs' technical advice.

Additional information and examples are provided in a range of Annexes (1 to 12).

Overall, the ESAs suggest a significant number of changes to the PRIIPs Regulation and would therefore encourage the co-legislators to consider a broad review of the PRIIPs framework. The ESAs also think that it is important that before proposals are made to change the PRIIPs Regulation appropriate consumer testing is conducted.

Within Section 3, Sections 3.1 to 3.6 cover the areas requested within the mandate from the Commission and in Sections 3.4 to 3.6 specifically the ESAs conclude that amendments should be made to the PRIIPs Regulation. In Sections 3.7 to 3.12 the ESAs present their views on other topics where changes are considered necessary to the PRIIPs Regulation taking into account the analysis conducted by the ESAs since 2018, as well as the feedback from stakeholders. The ESAs' recommendations are listed below.

In Section 3.3 on the supervision of the KID:

- The ESAs encourage the Commission to consider how the expected amendments to the PRIIPs Regulation can best facilitate, as well as leverage, the preparation of the European Single Access Point (ESAP)⁴, including the role of the *ex ante* notification of the key information document (KID) in this context.
- The ESAs highlight to the Commission the importance to clarify the effects of the upcoming application of the PRIIPs rules to UCITS from 1 January 2023 on the notification obligation for UCITS⁵.

¹ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

² [Call for advice](#)

³ [ESAs invite stakeholders' input on PRIIPs review | Eiopa \(europa.eu\)](#)

⁴ [Capital markets union: Commission adopts package to ensure better data access and revamped investment rules | European Commission \(europa.eu\)](#)

⁵ Directive (EU) 2021/2261 of the European Parliament and of the Council of 15 December 2021 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS), (OJ L 455, 20.12.2021, p. 15).

In Section 3.4, which concerns the assessment of the effectiveness of sanctions:

- The ESAs draw the Commission's attention to the fact that some questions have arisen regarding the division of competences between home and host authorities in the context of the application of the sanctions regime. Nevertheless, given the time constraints of the work on this advice, the ESAs have not been able to conduct a thorough analysis of the interaction between PRIIPs and the relevant sectoral rules, including applicable passporting arrangements, which is considered crucial as part of any assessment of the need for changes to the PRIIPs Regulation. Consequently, the ESAs stand ready to contribute to further work on this topic.
- The ESAs recommend an adjustment to the PRIIPs Regulation to clarify that the rules regarding the publication of sanctions apply to the case where an appeal was lodged and was unsuccessful.
- The ESAs invite the Commission to consider whether the PRIIPs Regulation could be better organised by:
 - moving Articles 15 to 18 to a more appropriate EU legislative source, as they do not specifically refer to powers related to all the products in scope of PRIIPs Regulation, nor to the KID itself, but to a category of products, i.e., insurance-based investment products (IBIPs), (for other PRIIPs products, the product intervention powers are provided in Regulation (EU) No 600/2014 (MiFIR)⁶);
 - moving Article 20 (referring to the general duty of cooperation between competent authorities (NCAs)) to Chapter V, which is currently the part of the PRIIPs Regulation which specifically relates to administrative penalties and other measures (i.e. the sanctions system). In this way, Article 20 could be read as a guiding principle for NCAs in applying the PRIIPs Regulation, especially in cross-borders cases.

In Section 3.5 addressing the content, structure, accessibility and provision of the KID, including in view of the use of digital media:

- The ESAs recommend the following in relation to the content, structure and accessibility of the KID:
 - In order to ensure that the KID is clear, succinct and comprehensible and to build on the insights of behavioural research, consumer testing should be conducted in relation to the sequence and title of the different sections and the details of the contents of the KID set out in Article 8(3) of the PRIIPs Regulation. Alternatively, it should be possible to specify these elements in the PRIIPs Delegated Acts⁷ on the basis of consumer testing.
 - As needed, changes should be made to the PRIIPs Regulation so that it is possible, if deemed appropriate based on consumer testing, to include a summary of the most essential information at the top of the KID, such as in the form of a dashboard.

⁶ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, (OJ L 173, 12.6.2014, p. 84)

⁷ In accordance with the empowerment in Article 8(5) of the PRIIPs Regulation.

- The PRIIP manufacturer should be required to take into account the characteristics of the type of retail investor to whom the PRIIP is intended to be marketed.
- The PRIIPs KID should be easy to access from the website of the PRIIP manufacturer.
- The ESA recommend that the rules regarding the provision of the KID should be consistent with the equivalent rules regarding other retail investor protection disclosures, such as in Directive 2014/65/EU (MiFID II)⁸ and the expected upcoming revision of Directive (EU) 2016/97 (IDD)⁹.
- The ESAs recommend that in order to ensure that the KID is adapted to digital media and the opportunities of digital disclosure can be harnessed changes should be made to the PRIIPs Regulation, such as to remove the second subparagraph of Article 8(1). It should be possible to include visual information, present information in a layered format and adapt the format and structure of the template for use on different devices, in particular smartphones. It should be possible to use the KID as an interactive tool (an interface, rather than a mere document), so that it is easier for the consumer to compare between products.
- The ESAs recommend that it should be possible for PRIIP manufacturers to provide a more personalised or tailored KID that complies with the relevant requirements in the PRIIPs Regulation and Commission Delegated Regulation (EU) 2017/653 (PRIIPs Delegated Regulation)¹⁰ without needing to publish that KID first on its website.
- The ESAs recommend that it should be required under the PRIIPs Regulation for the KID to be prepared in a machine readable form.
- The ESAs recommend that information on the past performance of the PRIIP should be included within the proposed ESAP. This involves preferably the inclusion of this information in the KID itself (as proposed in Section 3.8) and, in the meantime, an amendment to the ESAP proposals to refer to the information published separately on past performance in accordance with Article 8(3) of the PRIIPs Delegated Regulation.

In Section 3.6 on the scope of the PRIIPs Regulation:

- The ESAs do not recommend at this stage, at least until a more differentiated approach between products is possible under the PRIIPs Regulation, to extend the scope of the PRIIPs Regulation to additional financial products.
- The ESAs recommend to maintain the exemption in Article 2(2), point (d) but to align it with Regulation (EU) 2017/1129 (Prospectus Regulation)¹¹.

⁸ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

⁹ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), (OJ L 26, 2.2.2016, p. 19).

¹⁰ Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents (OJ L 100, 12.4.2017, p. 1)

¹¹ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, (OJ L 168, 30.6.2017, p. 12)

- The ESAs recommend to maintain the exemptions in Article 2(2), points (e) and (g) at this stage. Nevertheless, the ESAs invite the Commission to consider if point (e) could be further specified to promote consistent application and, in particular, the ESAs recommend to explicitly exempt immediate annuities (which do not have an accumulation phase) from the scope of the PRIIPs Regulation.
- The ESAs recommend that changes are made to Chapter 1 of the PRIIPs Regulation to specify more precisely which types of bonds fall within the scope of the PRIIPs Regulation. The guidance in the ESAs' Supervisory Statement of 2019¹² is considered an appropriate basis for such specifications. However, it is additionally recommended to specify that "make whole" clauses should not per se result in a bond falling into the scope of PRIIPs.
- The ESAs recommend to clarify the application of the scope to non-financial services companies.
- The ESAs recommend the development and inclusion in the PRIIPs Regulation of a significantly longer non-exhaustive list of products that are in or out of scope. Within the time constraints of this call for advice, the ESAs are not in a position to propose such a list at this stage, but stand ready to contribute to further work on this topic, in the next steps of any review process of the PRIIPs Regulation.
- The ESAs recommend that provisions are introduced to clarify or further specify the 'made available' concept in Article 5, regarding the circumstances under which a PRIIP manufacturer is required to draw up and publish a KID on its website, and to distinguish the responsibilities between the product manufacturer and distributor.

In Section 3.7 on approaches to take into account different types of products:

- The ESAs recommend the following types of changes to the PRIIPs Regulation:
 - To include a statement, for example in the recitals, that there can be a trade-off between comparability and comprehensibility of the information and that the first objective should be comprehensibility. Furthermore, that the Regulation aims for comparability between substitutable products.
 - Adjustments to the empowerment in Article 8(5) to state that where appropriate in order to provide fair, clear and not misleading information to retail investors, different approaches can be taken between different types of products.

In Section 3.8 on performance scenarios and past performance:

- The ESAs recommend replacing the current requirement in the PRIIPs Regulation for 'appropriate performance scenarios' to be shown for all products (Article 8(3)(d)(iii)), with the wording 'appropriate information on performance', to allow more flexibility on the nature of the information provided in the performance section of the KID.
- It is stated that, following the views presented in the ESA Final Report on draft regulatory technical standards (RTS) to amend the PRIIPs KID (JC 2020 66)¹³, the ESAs are still of the view that past performance should be included in the KID for relevant PRIIPs, such as investment

¹² [Joint ESA Supervisory Statement – application of scope of the PRIIPs Regulation to bonds | Eiopa \(europa.eu\)](#)

¹³ [Final Report following consultation on draft regulatory technical standards to amend the PRIIPs KID | Eiopa \(europa.eu\)](#)

funds (UCITS and AIFs, except structured UCITS and structured AIFs). This would be possible based on the amendment proposed above to remove the word 'scenarios' from Article 8(3)(d)(iii) of the PRIIPs Regulation.

In Section 3.9 on PRIIPs offering a range of options for investment (multi-option products or MOPs):

- The ESAs recommend changes to the PRIIPs Regulation with the aim of allowing the approaches discussed in the section on MOPs to be possible within the PRIIPs Delegated Regulation, and specifically to:

- Delete paragraph 3 of Article 6 and replace it with:

By way of derogation from [reference to the existing paragraphs 2 and 4 of Article 6], where a PRIIP offers the retail investor a range of options for investments, the PRIIP manufacturer may provide the information required by Article 8(3) with regard to the different investment options in separate documents.

The information provided relating to each underlying investment option shall:

- take into account the impact of the costs of the PRIIP other than the costs for the underlying investment option, at least to the extent that these costs have a significant effect on the return of the investment;*
- be of a maximum of three sides of A4-sized paper when printed.*

In addition, PRIIP manufacturers shall facilitate comparison between different underlying investment options through the use of a summary table or other comparison tool, such as a filtering mechanism.

- Add the following provision to Article 13:

Where the PRIIP offers the retail investor a range of options for investments, the person advising on, or selling, the PRIIP shall either provide the retail investors with:

- key information documents relating to those investment options that the retail investor is considering; or*
- a key information document which reflects the combination of investment options that the retail investor is considering.*

The provision of a key information document in accordance with point (b) does not require a revision of the key information document in accordance with Article 10.

In Section 3.10 on information in the KID on environmental or social objectives targeted by the product:

- The ESAs recommend to include a new section in the KID to show prominently where, in line with Regulation (EU) 2019/2088 (Sustainable Finance Disclosure Regulation or SFDR)¹⁴, a PRIIP

¹⁴ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1)

has sustainable investment as its objective or it promotes environmental or social characteristics. This could be done via:

- the inclusion of a new point in Article 8(3) of the PRIIPs Regulation along the lines of “information on whether the product has sustainable investment as its objective or it promotes environmental or social characteristics under a section titled ‘Does this product have a sustainable investment objective?’”; and
 - the deletion of the following text from the existing Article 8(3)(c)(iii) of the PRIIPs Regulation, ‘including, where applicable, specific environmental or social objectives targeted by the product’.
- The ESAs recommend that further details on the content of the section are specified in the PRIIPs Delegated Regulation.
 - The ESAs recommend to align the wording in Article 8 (4) of the PRIIPs Regulation with the SFDR definition in order to avoid misunderstanding or misalignment between the KID and the SFDR disclosure documents.

In Section 3.12 regarding successive transactions for the same PRIIP:

- The ESAs recommend to amend Article 13(4) of the PRIIPs Regulation as follows:

Where successive transactions regarding the same PRIIP are carried out on behalf of a retail investor in accordance with instructions given by that retail investor to the person selling the PRIIP prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall apply only to the first transaction, and to provide a detailed description where the revised key information document in accordance with Article 10 can be found. Additionally, prior to an additional subscription, the latest revised version of the key information document shall be provided to the retail investor upon request.

2. Background and approach

In the September 2020 new Capital Markets Union (CMU) Action Plan, the European Commission (Commission) announced its intention to publish a strategy for retail investments in Europe in the first half of 2022.

In May 2021, as part of its evidence gathering, the Commission launched a three-month public consultation on a wide array of aspects related to retail investor protection.¹⁵ The Commission is also undertaking an [extensive study](#) that was launched in 2020, which involves analysis of the PRIIPs KID, as well as other disclosure regimes for retail investments. This study will involve extensive consumer testing and mystery shopping, with the aim to ensure that any future changes to the rules will be conceived from the perspective of what is useful and necessary for consumers.

On 27 July 2021, the Commission sent to the Joint Committee of the ESAs a request for advice asking the ESAs to assist the Commission in the preparation of legislative proposals implementing aspects of the retail investment strategy, and more specifically regarding a review of the PRIIPs Regulation. The deadline for the ESAs to provide their advice is 30 April 2022.

The Commission invited the ESAs to provide advice on the following main areas:

- A general survey on the use of the KID.
- A general survey on the operation of the comprehension alert in the KID.
- A survey of the practical application of the rules laid down in the PRIIPs Regulation.
- An assessment of the effectiveness of the administrative sanctions, measures, and other enforcement actions for infringements of the PRIIPs Regulation.
- An assessment of the extent to which the PRIIPs Regulation is adapted to digital media.
- An examination of several questions concerning the scope of the PRIIPs Regulation.

The mandate closely follows the topics identified in the review clause in the PRIIPs Regulation (Article 33), to the extent that these elements have not already been addressed by other legislative initiatives. In particular, an EU Ecolabel for retail financial products is under development as part of the European Commission Action Plan on Financing Sustainable Growth. A decision has also been taken regarding the transitional arrangements under Article 32 of the PRIIPs Regulation¹⁶ for UCITS as defined in Article 1(2) of Directive 2009/65/EC (UCITS Directive).¹⁷ From 1 January 2023, the rules for the PRIIPs KID will apply to such UCITS, as specified in these new requirements.

For most of the areas set out above, additional more specific elements to be addressed were identified in the mandate; for instance for the general survey on the use of the KID there are four sub-elements,

¹⁵ [EU strategy for retail investors \(europa.eu\)](#)

¹⁶ Regulation (EU) 2021/2259 of the European Parliament and of the Council of 15 December 2021 amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS (OJ L 455, 20.12.2021, p. 1)

¹⁷ The exemption has also included some non-UCITS funds in accordance with Article 32(2) of the PRIIPs Regulation.

including to provide evidence on the extent to which marketing information aligns with the information in the KID.

Notwithstanding the mandate provided by the Commission, the information collected and analysis conducted by the ESAs since 2018 would indicate that changes to the PRIIPs Regulation are needed in other areas, besides those addressed in the mandate, in order to achieve the optimal outcomes for retail investors. One of the main areas of work by the ESAs following the implementation of the KID was a review of the PRIIPs Delegated Regulation which resulted in the ESAs' submitting RTS to the Commission in February 2021. These changes are due to be implemented on 1 January 2023 and this is also aligned with the date of implementation for UCITS as stated above¹⁸. When concluding their review, the ESAs stated their views on the need for changes to the PRIIPs Regulation in a number of areas. In addition, following analysis on the application of the scope of the Regulation, the ESAs had also seen a need for changes to the PRIIPs Regulation.¹⁹ Consequently, this technical advice presents the ESAs analysis and recommendations on a range of other issues besides those covered in the mandate from the Commission, where the ESAs consider that changes are needed to the PRIIPs Regulation.

In parallel with sending the call for advice on the PRIIPs Regulation to the ESAs, the Commission also sent separate calls for advice individually to EIOPA²⁰ and ESMA²¹ regarding other aspects of retail investor protection, as part of the work to develop a retail investment strategy. The ESAs coordinated the work undertaken for these different mandates.

The ESAs acknowledge that the importance and complexity of the topics set out in the Commission's request for advice called for a thorough involvement of stakeholders to ensure that they could adequately contribute to the formulation of the advice. At the same time, the short timeframe available to prepare this advice, placed constraints on the type of consultation that could be conducted and the time that could be given for responses. Taking into account these constraints, as well as the nature of the request from the Commission, which sought various different types of evidence regarding current market practices, the ESAs decided to launch a Call for Evidence which took place between October 21 and December 16 2021. In addition, the ESAs held a public event on 11 February 2022²² to present their preliminary views taking into account the feedback received during the Call for Evidence.

The ESAs also collected information from NCAs, for example for the task to provide evidence on the supervision of the KID, including the percentage of cases where inaccurate KIDs were identified by NCAs. This information was provided on a best-efforts basis taking into account that NCAs did not necessarily hold the information requested by the Commission.

The short timeline given for providing the advice, and the absence of dedicated funding, also meant that it was not possible for the ESAs to conduct consumer testing. However, the ESAs think that it is

¹⁸ Commission Delegated Regulation (EU) 2021/2268 of 6 September 2021 amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) 2017/653 (OJ L 455I , 20.12.2021, p. 1). The implementation date of 1 January 2023 was recently proposed by the Commission ([Register of Commission Documents - C\(2022\)1541 \(europa.eu\)](#))

¹⁹ See Joint ESA Supervisory Statement on bonds.

²⁰ [Call for advice to EIOPA regarding certain aspects relating to retail investor protection | Eiopa \(europa.eu\)](#)

²¹ [Call for advice to the European Securities and Markets Authority \(ESMA\) regarding certain aspects relating to retail investor protection \(europa.eu\)](#)

²² [ESAs Public Hearing on the Review of the PRIIPs Regulation | Eiopa \(europa.eu\)](#)

important that before proposals are made to change the PRIIPs Regulation appropriate consumer testing is conducted.

3. Technical advice

3.1 General survey on the use of the KID

Extract from the call for advice

A general survey on the use of the PRIIPs KID across the Union, including, to the extent feasible, evidence on:

- The number and type of products and their market share for which PRIIPs KIDs are produced and distributed.*
- The recent developments and trends on the market for PRIIPs and other retail investment products.*
- The extent to which PRIIPs KIDs are used by product distributors and financial advisors to choose the products they offer to their clients.*
- To the extent feasible, the extent to which marketing information aligns with or differs from the information in the PRIIPs KIDs.*

3.1.1 Number and types of PRIIPs and their market share and recent development and trends on the market for PRIIPs and other retail investment products

(i) Introduction

The ESAs are not able to provide complete information on the number and types of PRIIPs and their market share for which KIDs are produced and distributed, due to various challenges to collect this data.

To start with, the PRIIPs Regulation does not include requirements for PRIIP manufacturers to report information to NCAs, as exists in some other EU legislation.

Second, only a limited number of Member States require *ex ante* notification of KIDs which can be a source of such data. Where the Member State does not require such a notification, the PRIIP manufacturer does not need to provide the KID to the NCA and there is not currently a central European database where KIDs are collected and stored.

In consequence, there is no single database for information about PRIIPs and KIDs. There are only a few national and no EU-wide reporting systems for information on manufacturers, instruments, product details, sales volumes or outstanding volumes of PRIIPs. These circumstances raise significant challenges for the task to provide information about the PRIIPs market in terms of the number of products offered or sold, sales volumes and market shares, including in relation to other products sold to retail investors.

Although it has not been possible to provide complete information, for the purposes of this advice, the ESAs have worked to gather relevant available information. This includes information from a number of sources as follows:

- Information reported by PRIIP manufacturers based on EU legislation, but for different purposes;
- Information available to, or collected by, the ESAs;
- Information available to, or collected by, NCAs;
- Information from external financial data providers.

The approach taken, and the limitations regarding the data available, are summarised in the subsequent sub-sections and the detailed data is presented in Annexes 1-6.

(ii) EU data on insurance-based investment products

First, some information on IBIPs is available based on the reporting requirements for insurance undertakings in Directive 2009/138/EC (Solvency II)²³.

The importance of the data from Solvency II has been gradually increasing over time and this data is currently extensively used for the drafting of the EIOPA Consumer Trends Report and broadly to perform market monitoring supervision.

Solvency II data represents the only common reporting available for IBIPs and different analysis has confirmed that with appropriate assessments this source of information can be a good proxy to identify market trends and areas of possible concerns.

It has to be acknowledged, however, that using Solvency II data for consumer protection purposes has some limitations due to the prudential scope for which Solvency II data are collected. Solvency II data are reported by lines of business under which multiple products fall and vice versa (i.e. a product's premium can be allocated to multiple lines of business). It is not possible to separate retail specific data from the Solvency II database²⁴.

In the context of the limitations described above, the Solvency II data can be used to provide an indication of the market size in terms of gross written premium and information on the number of contracts, split between the two main broad product types (unit-linked / index-linked products and profit-participation products) and between the type of premium (e.g. single and regular).

This information from Solvency II is presented in Annex 1.

Second, some information on IBIPs, is available based on the analysis conducted to prepare EIOPA's costs and past performance (CPP) report published annually. This can provide some additional insights into the features of IBIPs, including the recommended holding periods, the summary risk indicator (SRI) and underlying drivers of net returns, given that information on these features are not available

²³ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), (OJ L 335, 17.12.2009, p. 1).

²⁴ These issues are discussed further in EIOPA's Retail risk indicators: methodology update (Dec 2021). [Retail risk indicators: methodology update | Eioipa \(europa.eu\)](#)

in the Solvency II data.²⁵ The CPP reports aim therefore to improve the understanding of the costs and returns of IBIPs, acknowledging the limitations of the current methodology in place. This information represents only a sample of the IBIP market, as described further in Annex 2, together with the analysis conducted.

(iii) EU data on packaged retail investment products

As indicated above, the data available to the ESAs is not complete, given that there are significant challenges to present data on market shares or sales volumes. In the absence of an EU reporting framework, this is particularly the case for packaged retail investment products (PRIIPs). Even if an *ex ante* notification of KIDs is in place, there are difficulties to provide information about volumes of these products sold to retail investors given the following:

- First, PRIIPs is a market-based EU Regulation capturing all products sold to EU retail investors, and products are sold not only by local manufacturers or distributors, but also on a cross-border basis. As mentioned above, there neither exists an EU-wide source or database for these KIDs nor an EU-wide reporting system for KIDs and volume information. This means that data is only available where NCAs require national reporting relating to these products, and there may still be issues regarding information about sales from foreign manufacturers and distributors. Inversely, at EU level there could be issues with double counting when the same product is sold in different Member States.
- When trying to use alternative data to estimate the market share and sales volumes of PRIIPs, several challenges occur:
 - How to identify PRIIPs? There is not a precise way to identify PRIIPs within the available data sources: pre-defined data categories in these data sources are only of limited use, as the PRIIPs Regulation does not include a list of types of products that are in or out of scope, and that should be determined on a case-by-case basis for some types of products. This is also the case for Classification of Financial Instrument (CFI) codes: CFI codes are not part of the KID, and there are no CFI codes that are valid only for PRIIPs. In consequence, CFI codes may only be used as crude proxies for identifying these products. If available, PRIIPs that have an International Securities Identification Number (ISIN) can be identified via this reference number, as the ISIN is part of the information contained in the KID. Nevertheless, not all instruments provide an ISIN and part of the PRIIPs market does not have the possibility to provide such an identification, e.g. some derivatives. Additionally, private offerings of PRIIPs may not be available in some data sources at all or only for limited time periods.
 - How to identify products for retail investors? Products that require a KID if sold to retail investors, may additionally (or primarily) be sold to institutional or professional investors, so buyers of these PRIIPs are not necessarily retail investors, and in many NCA reporting systems there is no specific identification for retail investors. As an approximation, natural persons (i.e. entities not having a Legal Entity Identifier (LEI))

²⁵ The latest report was published on 5 April 2022: [Cost and past performance report 2022 | Eiopa \(europa.eu\)](#)

can be used as a proxy for retail investors, but this has limitations, as for example, legal persons could be retail clients instead of professional clients according to MiFID II, and on the contrary some natural persons can be treated as professional clients.

- How to capture very short-term products? Some PRIIPs have a very short recommended holding period, including as short as one day, e.g. some leverage products like Turbos or contracts for difference (CFDs), and if the data source used does not provide daily information on the number or volumes sold, it is difficult to capture the market share of these short-term products that are typically traded within a few days.
- External data sources for structured products are available to some extent. However, these services are not specifically dedicated to PRIIPs, and there may be limitations in market coverage for some countries.

The ESAs have described below the information that they have been able to obtain for PRIIPs and the limitations of this data.

1) ESMA sample of KIDs and PRIIPs

Analysis was conducted using a large sample of KIDs collected by ESMA, as well as market data from the financial data provider StructuredRetailProducts.com (henceforth 'SRP.com'). 47,100 KIDs issued between January 2018 and July 2021 are included in this sample. Out of these, based on the content of the KID and the product's ISIN (when present), around 2,000 were identified as IBIPs, and around 9,500 as funds.²⁶

Around two thirds of the KIDs (approximately 30,900) were downloaded via SRP.com, which also provides additional metadata associated with the PRIIP, among which is the underlying type, payoff type, issue date, countries of sale, and sales volume (actual or estimated). Among these products, only about 100 were identified as IBIPs, and around 2,000 as funds. The rest of the KIDs (approximately 16,200) were downloaded from PRIIP manufacturers' websites via web-scraping procedures.²⁷

This analysis is presented in Annex 3.

2) EBA data on structured deposits

The ESAs also considered the data available at EU level regarding specifically structured deposits. In this respect, the most recent work by the ESAs on this topic is the information published in the 'EBA Report on cost and past performance of structured deposits' published in 2019²⁸.

In summary, the availability of data on structured deposits from all EU markets (currently 27 EU markets, but at the time of publishing the Report it was 28 EU markets) was difficult to obtain due to the specific characteristics of structured deposits. The Report analysed various sources of different

²⁶ IBIPs were identified by the presence of at least one IBIP-specific performance scenario in the KID. Funds were identified either via their ISIN or by the presence of specific fund-related words in the KID. The identification may not be exhaustive. In particular, it was not possible to identify some IBIPs due to errors in the detection of the performance scenarios.

²⁷ Any KID found in this way which had already been downloaded via SRP.com was discarded.

²⁸ [EBA BS 2018 XXX \(EBA report EC request SDs - Report\).docx \(europa.eu\)](#)

kinds, including NCAs and alternative sources, public and private databases, and credit institutions. A more detailed summary of the information collected for this Report is provided in Annex 4.

(iv) EU data on development and trends on the market for other retail investment products

In order to specifically address the request in the mandate to provide information on the developments and trends on the market for other retail investment products (as well as PRIIPs), the ESAs conducted some analysis regarding UCITS, retail AIFs, and shares and related products for the period 2018-2021. This analysis is presented in Annex 5.

In terms of other retail investment products this might be seen to include personal pension products to the extent that these are not within the scope of PRIIPs.²⁹ EIOPA conducts analysis of developments and trends for these products as part of existing work, in particular within the annual Consumer Trends Report (see Section 2.1.2 of the latest Report published in January 2022).³⁰ EIOPA's reporting on costs and past performance, as referred to already above, also covers the available information on pension products. Given these existing Reports already reflect the data available on pension products, further analysis in this context was not deemed relevant as part of the work on this advice.

(v) Data collected from NCAs

The ESAs asked NCAs if they were able to provide data that can be relevant for the work on this advice.

As part of this work, it was identified that transaction data reported to NCAs under MiFIR could potentially be used to provide data on PRIIPs and other retail investment products using a consistent methodology. In order to assess further the relevance of this data, an analysis was conducted first by one NCA before considering if it was relevant to extend the analysis to cover additional Member States.

Overall, given that the challenges described in the 'Introduction' to this section were also applicable in the case of the MiFIR data (e.g. how to identify retail investors or the market share), as well as given the other data sources available as described above, it was decided it would not be relevant to request a comparable analysis be conducted for other Member States.

In addition, a range of NCAs were able to provide other data that they collect on a national level for supervisory purposes, including on the number and type of PRIIPs and their market share. However, the ESAs did not consider it meaningful to seek to combine the information provided by different NCAs into aggregate figures. The challenges described in the 'Introduction' to this section were again applicable in this context. This approach also reflects the differences in the types of data available in different Member States, and that data was not available for the majority of Member States.

²⁹ The ESAs consider that this does not include occupational pensions (IORPs).

³⁰ [Consumer Trends Report 2021 | Eiopa \(europa.eu\)](#)

At the same time, for both the MiFIR data and the other data provided by NCAs, it was still considered relevant to present this information separately per Member State within the advice to complement the other data sources and thereby provide a further indication of the number and type of PRIIPs and other retail investment products, and their market share, within certain Member States. More detailed information has been included for PRIIPs (rather than IBIPs), given the data available for IBIPs at EU level under Solvency II as explained above. This information is included in Annex 6.

3.1.2 Use of the KID by product distributors and financial advisors

This section summarises information provided by NCAs and the feedback from external stakeholders via the Call for Evidence on this issue.

(i) Information gathered from NCAs

The majority of NCAs (18) reported that they do not have information on the actual usage of the KID by distributors and advisors to select products, separate from the requirements in the PRIIPs Regulation regarding the provision of the KID to the retail investor (Articles 13 and 14).

It was also noted that there are cases of direct distribution (products distributed by their manufacturer), so in this context the KID itself may not be used, but the manufacturer may still use certain elements required by PRIIPs, such as the SRI or performance scenarios, for their analysis or internal approval processes for the product.

In terms of the NCAs which provided input on this issue, while most of these NCAs reported that they had not conducted specific or systematic analysis of the issue, they expressed their views or experiences regarding market practices. These inputs varied between NCAs, suggesting some different practices between markets, as follows:

- Three NCAs expressed their view or experience that the KID is not used to select products during the advice or distribution process. In one Member State, this is because separate simulations based on the specific contract are used instead.
- Five NCAs expressed their view or experience that the KID is more actively used by distributors and advisors, including to select between different products.

(ii) Feedback from the Call for Evidence

Around half of the respondents to the Call for Evidence provided input on this issue. The main elements can be summarised as follows:

- A number of respondents focused only on the fact that the regulatory obligations regarding the provision of the KID are complied with.
- A material number of respondents highlighted the limited use, or issues related to the use, of the KID:
 - This included the point that some distributors still prefer to use documents based on national law, for example, because, in the case of IBIPs, they are seen as more specific

to insurance products, or because the information on potential future performance is seen as more meaningful.

- A couple of respondents raised the issue that there are challenges to use the KID as a basis for comparison, because it might not contain comparable costs figures.
 - Various respondents pointed out that other tools or documentation are used for product filtering, which better suit the purpose, and can allow filtering based on product features (e.g. guarantee level, type of underlying etc.). This might include product databases.
 - Numerous stakeholders commented that the KID is not widely used due to flaws in its contents, or because it is not a consumer-friendly document (e.g. the absence of relevant information, issues with performance scenarios, or the information for MOPs not being meaningful were mentioned). Similar feedback was also provided in the context of the use of marketing communications (see the next Section 3.1.3)
 - One stakeholder stated that the KID seems to be mainly used for “execution-only” sales, i.e. without a suitability or appropriateness test.
- At the same time, a material number of respondents were more positive regarding the use of the KID, but this was less than those that expressed negative views. There was also some overlap, i.e. some stakeholders highlighted that the KID is used to some extent, while also stating that it is not the main point of comparison. The main points made in this context were that:
 - The KID is used, for example, for filtering between asset classes or risk classes, or as part of matching products to the target market.
 - The KID is used more to understand specific features of the product than as a comparison tool.
 - One stakeholder reported that the data underlying the KID has been a basis for the development of comparison tools.

3.1.3 Alignment between marketing information and the KID

(i) Introduction

The PRIIPs Regulation includes the following requirements regarding marketing information and how it relates to the KID:

- The KID needs to be clearly separate from marketing materials and not contain any cross-references to marketing materials (Article 6(2)).
- Marketing communications are not permitted to contradict the KID or contain any information that diminishes the KID’s significance (Article 9).
- Marketing communications need to provide information on how and from where to obtain the KID (Article 9).

There are also applicable rules in the sectoral legislation, such as the rules in IDD and MiFID II that marketing communications shall be ‘fair, clear and not misleading’.³¹

It is also relevant to take into account that marketing communications can take a range of different forms and can also include, for example, messages on social media, as well as more “traditional” forms of marketing.

The subsequent sections summarise the information gathered from NCAs and the feedback received from the Call for Evidence on this topic respectively.

(ii) Information gathered from NCAs

Nine NCAs mentioned that they did not have a specific supervisory focus on marketing information in relation to the differences with the KID, or that they do not perform *ex ante* or systematic supervision of the marketing documents.

Six NCAs reported that no specific observations or material differences have been found between PRIIP marketing materials and the KID.

One NCA detailed their approach to conduct an *ex ante* review of marketing materials, including the consistency with the KID, for PRIPs that are publicly offered.

Another NCA explained that they had performed a mystery shopping exercise that showed that distributors tend to focus on marketing documents instead of the regulatory pre-contractual documents. This is in line with the responses of several respondents to the Call for Evidence (see below) that claimed that only marketing documents are used in the sales process, due to issues regarding the readability and flexibility of the KID.

Amongst the information provided by other NCAs, there was also some overlap with the comments submitted by respondents to the Call for Evidence. The main feedback from NCAs was the following:

- Several NCAs raised the fact that the two types of documentation are not of the same nature and do not serve the same purpose and need to comply with different requirements. In this respect, it is expected that there would be material differences between marketing communications and the information in the KID.
- Around half of NCAs (15) described marketing documents as being more appealing and visually attractive than the KID. This can be due to their visual features, such as including graphs, pictures, colours, or illustrations. It is also due to the fact that they are usually written in plain language, avoiding technical terms and use a schematic style of presentation that makes them easy to read and understand.
- Certain NCAs emphasised that marketing documents focus on selling the product and are designed to highlight its strengths (potentially causing an imbalance with the costs and risks³²). In the same vein, one NCA mentioned that there is a focus on the return on capital in the marketing documents.

³¹ Article 17(2), IDD and Article 24(2), MiFID II. This issue of marketing information is also addressed in the parallel advice by ESMA and EIOPA on retail investor protection.

³² This can raise a question of whether the information is presented in a fair and not misleading way.

- Some contrasting feedback was received regarding the level of detail in marketing communications, which presumably reflects the different types of marketing documents or communications that can be used:
 - Six NCAs underlined the fact that marketing documents generally contain less information and are more concise than the KID and therefore do not include all the information necessary for a retail investor to make an informed decision.
 - In contrast, other NCAs mentioned that the information in the marketing documents is more detailed, containing descriptions of product features that are not considered possible to include in the KID due to the prescribed template and page limit.

In addition, feedback was received from NCAs on some specific differences between marketing communications and the KID, including:

- Five NCAs reported that information on performance is included in marketing materials, but generally in different forms to the KID: for instance past performance, “what-if” scenarios or narrative information and using different presentations, such as graphs or charts. For one NCA, the KID performance scenarios are generally not sufficiently highlighted.
- For four NCAs, they have noted that costs are either absent from the marketing documents, are not presented exhaustively, or are not sufficiently highlighted. Two NCAs reported that the reduction in yield (RIY) methodology to present costs (as is used in the KID) is not used in marketing documents.
- Three NCAs reported that the KID SRI is not included in marketing documents, but instead a description of the different risks. Two NCAs expressed the view that the risks are not sufficiently emphasised in the marketing documents.

(iii) Feedback from the Call for Evidence

39 respondents to the Call for Evidence provided input on this issue.

A substantive number of respondents started their answer by stressing the fact that marketing documents and the KID are of a different nature and serve different purposes. As such, they argued that they should not be compared. In particular, it was noted that:

- Marketing materials have to comply with requirements originating from different sources besides the PRIIPs Regulation, most notably MiFID II and IDD, as well potentially national requirements.
- PRIIP manufacturers may use language in marketing materials that is more industry specific than the language used in the KID.
- Marketing materials are designed to emphasise key selling points or advantages of a product and to encourage retail investors to a certain investment decision.

At the same time, respondents also raised a number of issues which were seen to be problematic with the KID and which were the basis for different approaches being taken in marketing communications. This includes:

- The lack of flexibility in the KID. It was stated that the prescribed wording and narratives (which are not necessarily specific to the product) in the KID mean that PRIIP manufacturers

use different terminology in marketing communications that is considered more suitable for the product. It was also mentioned that marketing documents include graphs and illustrations that cannot be included in the KID due to its prescriptive nature and the three pages limit.

- Complex language in the KID:
 - Some respondents contended that the narratives in the KID are lengthy, complex, and formalistic and are not in plain language, which hinders the readability of the document.
 - This is seen to contrast with marketing documents that are seen as more appealing, easier to read and understand, use plain and accessible language, and focus on the concerns of retail investors.

Some different views were provided regarding the extent to which marketing communications are complementary to the KID.

On the one hand, several respondents consider that the KID was not designed to be the only document used by distributors, that it is not sufficient on its own, and thus it is not intended to replace marketing documents. To support this, it was argued that the KID is a technical document that requires some basic knowledge about the product, which can be provided to the retail investor via the marketing documents. In this context, one respondent pointed out that they consider that retail investors can understand the difference between a marketing document and the KID.

On the other hand, a number of respondents clearly state that the issues described above (e.g. the contrast in terms of readability between marketing documents and the KID), mean that only marketing documents are used in the sales process.

Lastly, another respondent considered that the way the different documents are presented to the retail investor during the sales process is decisive.

3.2 General survey on the operation of the comprehension alert

Extract from the call for advice

A general survey on the operation of the comprehension alert, taking into account any guidance developed by competent authorities in this respect, the survey should gather data on the number and types of products that include a comprehension alert in the PRIIPs KIDs, and to the extent feasible, evidence on whether retail investors and financial advisors consider the comprehension alert in their investment decisions and/or advice.

3.2.1 Introduction

In accordance with Article 8(3)(b) of the PRIIPs Regulation, a comprehension alert shall be included in the KID, where applicable, and shall read, ‘You are about to purchase a product that is not simple and may be difficult to understand’.

The criteria for when a comprehension alert shall be included are provided in Article 1, second subparagraph, points (a) and (b) of the PRIIPs Delegated Regulation. These provisions refer to the definitions of complexity in MiFID II and IDD which determine whether a product can be sold “execution-only”, i.e. without a suitability or appropriateness test. The rules in MiFID II and IDD are supplemented by provisions in the associated delegated acts and ESMA and EIOPA Guidelines.

3.2.2 Feedback from the Call for Evidence

Starting with the consumer associations that responded – it was stressed that the comprehension alert is not applied widely enough and in particular that all IBIPs should be deemed complex, because they combine an insurance risk coverage with long-term savings and investments, both in the contribution phase as well as in the pay-out phase. It was also argued that the comprehension alert could additionally highlight the risks of exiting or cancelling the investment early.

Regarding the industry associations the prevailing positions divided by sector (banking, insurance and asset management) are described in the sub-sections below.

(i) Banking sector

The banking sector argued to abolish the comprehension alert, because it is not seen to bring actual added value to investors. This is on the basis that the vast majority of KIDs carry this alert, as most existing PRIIPs are “complex products” within the meaning of Article 25(4), MiFID II. Consequently, they argued, it is unlikely that investors give particular attention to such a widely used alert. In addition, they consider that the complexity of the products is made clear enough by the structure and content of the KID.

In general terms, they also argued that the complexity of a product is not synonymous with high risk or a lack of comprehensibility. It was maintained that there are products deemed complex that are

low risk and easy to understand, whereas some products deemed non-complex can be very risky. One example given was that a classic discount certificate would be, in their view, less complex than an equity fund and much less complex than an IBIP.

In this respect, they suggested choosing a different criterion for the inclusion of the comprehension alert in the KID, if the alert is maintained.

(ii) Insurance sector

The insurance sector stressed the need for a clearer definition of complexity. They also argued that the warning should be reserved for exceptional cases and not be the norm.

As pointed out by the banking sector, the insurance industry also focused on redefining the concept of complexity. They argued, the complexity in the structure of the product is not always reflected in a greater risk for the investor. For them, the best example is seen as the risk mitigation techniques introduced in Regulation (EU) 2019/1238 (PEPP)³³: these can be very sophisticated, but they benefit consumers by reducing the risk of the investment.

Due to a lack of clarity regarding the definition of complexity, it was reported that many insurers currently include a comprehension alert for (almost) all of their products to avoid legal risks, although some differences were reported between Member States.

(iii) Asset management sector

The asset management sector also argued to revise the criteria for assessing the complexity of PRIIPs in order to clarify the scope of products aimed at retail investors subject to the comprehension alert, taking into account products that are normatively defined at European or national level (for example in terms of investment limits, or access and redemption methods), such as retail AIFs (regulated at European or national level).

It was pointed out that (non-structured) UCITS are classified as non-complex financial instruments under MiFID II and can be sold execution-only. In their view, unfortunately, the “white list” of non-complex products in MiFID II currently does not recognise the existence of national retail AIF regimes comprising comparable safeguards to the UCITS regime in some Member States. Certain respondents consider that these types of AIFs should also be considered as non-complex financial instruments and thus should also not require a comprehension alert.

One respondent suggested replacing the comprehension alert for non-complex funds with a “long-term alert” (and the risk assessment), that could give more valuable information to inexperienced retail investors.

Some respondents highlighted the case of open-ended real estate funds that arguably offer straightforward opportunities to participate in the price development of the real estate market by investing in mostly commercial properties in the EU and worldwide. The only product feature that requires specific attention by investors is, in their view, the existence of minimum holding and

³³ Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP), (OJ L 198, 25.7.2019, p. 1).

termination periods for redeeming funds units. They argue, this feature is, however, specifically highlighted by the liquidity risk warning that needs to be provided in the context of the SRI presentation.

It was maintained that the approach of coupling the comprehension alert with the MiFID II complexity notion makes it difficult for retail investors to take any added value from this information. Many respondents were of the opinion that as long as the approach taken for including this kind of alert does not make it clear for retail investors on which basis they are warned regarding particular products, it would make more sense to abolish this alert.

3.2.3 Information gathered from NCAs

The ESAs understand that no NCAs have developed and published guidance on the comprehension alert in addition to the Level 1, 2 and 3 rules that exist in the context of MiFID II and IDD. Some NCAs have taken other steps to convey their views to the industry regarding the application of the alert in their market, such as via supervisory reviews, workshops or meetings with PRIIP manufacturers.

Regarding data on the number and types of products with a comprehension alert, the vast majority of NCAs were not able to provide quantitative data. However, the feedback suggests that the comprehension alert is present in the vast majority of structured products and a high proportion of IBIPs, but with some variation between different Member States, for example:

- In Germany based on data from an external provider around 70% of money market instruments include an alert, and around 90% of other types of structured products.
- In France, Italy, Czech Republic, Croatia, Latvia and Luxembourg based on the supervisory experiences and KIDs review, most KIDs include an alert.
- In Hungary all unit-linked and regular premium IBIPs include an alert.
- However, in Austria only a small number of IBIPs include a comprehension alert.

It can be noted, that this proportion of PRIIPs with a comprehension alert will change when UCITS come into the scope of PRIIPs³⁴.

Most NCAs did not have evidence on whether retail investors and financial advisors consider the comprehension alert in their investment decisions and/or advice. However, it can be mentioned that:

- Various NCAs were of the view that the alert would not be a meaningful indicator or way to distinguish between products for retail investors given that it is present in such a high proportion of KIDs.
- However, one NCA conducted some testing on warnings, including the comprehension alert. The results were that the alert was found to be a clear message, which emerges well through an accessible and concise document. It was reported that it is noticeable, in particular, by its central layout and being easily identifiable within the document. Investors understood that their attention is drawn to the complexity of the product in which they are going to invest and that they must therefore read the document as a whole; for the persons with the lowest

³⁴ In accordance with Article 25(4), MiFID II, 'shares or units in UCITS, excluding structured UCITS as referred to in the second subparagraph of Article 36(1) of Regulation (EU) No 583/2010' are deemed non-complex and therefore do not require the inclusion of a comprehension alert;

levels of financial literacy, this message implies that they will have to be advised. On the other hand, certain investors found that the message appeared to infantilise investors.

- Another NCA had not studied the impact of the alert, but highlighted that a number of other consumer research studies have shown that, in general, warnings in disclosure documents can be less effective than policy makers might think or hope.³⁵

3.2.4 ESAs' analysis of a sample of KIDs

This ESAs used the sample of KIDs collected by ESMA, as described in Section 3.1.1 above, to conduct analysis on the use of the comprehension alert.

The ESAs searched for the comprehension alert in KIDs in its different formulations across languages. The comprehension alert was found in 74% of IBIPs and in 94% of PRIIPs. This is consistent with expectations based on the exemptions set out in the PRIIPs Regulation. However, among PRIIPs, the comprehension alert was found in 85% of funds vs. 98% of other PRIIPs. This is potentially an indicator of non-compliance, as basically all non-UCITS funds are deemed complex under MiFID II.

The detailed analysis conducted is presented in Annex 7.

³⁵ For example, *Chapter 5 (A warning about warnings)*; [Legally mandated information to consumers: necessary, but not always sufficient | okt | AFM](#)

3.3 Survey on the practical application of the rules

Extract from the call for advice

A survey of the practical application of the rules laid down in the PRIIPs Regulation, taking due account of developments in the market for retail investment products, which should include practical evidence on:

- To the extent feasible, the amount and nature of costs per PRIIP to various market participants of complying with the requirements of the PRIIPs Regulation, including the costs of manufacturing, reviewing, revising, and publishing PRIIPs KIDs, including as a proportion of total PRIIP costs.
- To the extent feasible, the extent to which the PRIIPs Regulation is applied in a consistent manner across the EU for the most commonly sold types of PRIIPs.
- The supervision of the PRIIPs KID, including the percentage of cases where inaccurate PRIIPs KIDs were identified by NCAs.
- The number of relevant mis-selling events before and after the introduction of the PRIIPs KID, including through data on the number of complaints received, number of sanctions imposed, and other relevant data.

3.3.1 Amount and nature of costs per PRIIP

This section summarises the feedback from the Call for Evidence on the amount and nature of costs for PRIIPs. Taking into account the nature of this topic concerning the costs for market participants, NCAs were not in a position to provide substantive input on this issue.

With respect to the different types of costs incurred to comply with the PRIIPs Regulation:

- Most stakeholders differentiated between project costs and running costs. The former refers to costs which are incurred at each change of the legislative provisions (PRIIPs Regulation, Delegated Regulation, or Q&A updates), while the latter relates to costs which are incurred as long as the legal regime is in place.
- Regarding project costs more specifically, stakeholders listed the costs for front office staff to build industry specifications and to participate in industry standardisation work on the technical specifications of the KID. Furthermore, certain stakeholders also highlighted costs incurred by building an IT infrastructure for data collection and calculations, and to maintain staff for the legal analysis and quality monitoring of KIDs. In addition, stakeholders mentioned translation costs, costs incurred for training distributors to the new KID format, and fees for centralised industry solutions for publishing the document.
- Regarding running costs, stakeholders stressed the costs incurred by maintaining a front office and legal staff to follow changes to the rules and to reply to public consultations. Furthermore, stakeholders also mentioned costs for an operations team to maintain the production tools and fees charged by external providers (on a per KID basis).

- Several stakeholders indicated that costs are duplicated (costs of compliance plus the costs of adapting to the new rules) in case of any changes to the PRIIPs framework.

With respect to the average costs per PRIIP of complying with the requirements of the PRIIPs Regulation, most stakeholders stressed the difficulty to quantify the average cost per PRIIP since they vary widely across different markets and products. Several stakeholders gave an estimate of the average production costs for a single KID for structured products from 30 to 10,000 EUR. For a single IBIP, certain stakeholders reported recurring costs of more than 3,000 EUR in addition to several millions of transversal project costs. Other stakeholders provided estimates of manufacturing a single KID as 5,000 to 7,500 EUR per individual product (excluding the costs of IT tools) and for updating a single KID as 4,000 to 6,000 EUR per individual product. It should be acknowledged that these figures are difficult to compare, given the lack of a precise common basis for the definition of these costs.

With respect to the proportion of the total costs for the product represented by the costs of complying with the PRIIPs Regulation, respondents indicated that this cannot be quantified and is too difficult to evaluate. The main reasons provided for this relate to the wide variance of the proportion of costs across different markets and products, and the fact that most PRIIP manufacturers would not reflect these costs in the product costs.

3.3.2 Consistency of application of the PRIIPs Regulation

(i) Feedback from the Call for Evidence

In the Call for Evidence, the ESAs asked for the experience of stakeholders on the extent to which the PRIIPs Regulation is being applied in a consistent manner across the EU and what are the main areas of inconsistencies. Responses were received from 29 stakeholders and a split can be made as follows:

- 20 respondents considered that there were differences in the way the PRIIPs Regulation has been applied across EU. Some of these respondents highlighted that there had been a substantial degree of consistency amongst PRIIP manufacturers (notwithstanding certain differences stemming from a lack of clarity in the PRIIPs Delegated Regulation), but there had been divergences in the supervisory approaches by NCAs. Several respondents highlighted that this undermines the objective of the CMU and creates obstacles to cross-border activities.
- Five respondents stated that they were not aware of significant inconsistencies.
- The other four respondents (from the insurance sector) considered that there were some divergences, but these were justified based on differences in products and local markets.

Among those respondents that considered that there were inappropriate inconsistencies in the application of the PRIIPs Regulation:

- 13 industry stakeholders expressed a critical view about the optionality with respect to the requirement to notify the KID to the NCA in advance of a product being marketed (Article 5(1) of the PRIIPs Regulation). It was noted that this has been implemented only in certain Member States and the approaches taken amongst these NCAs are also different (see further Section 3.3.3 on the Supervision of the KID).

- Five respondents stated that there have been cases where NCAs did not accept KIDs originating from other EU markets and had asked distributors to amend the KIDs. Some respondents expressed the view that this has related, for example, to national advertising and marketing rules or differences in the interpretation of the scope of the PRIIPs Regulation³⁶.
- A number of respondents mentioned different criteria or approaches taken regarding certain aspects of the KID, for example on MOPs, transaction costs or real estate costs.

However, overall, the majority of stakeholders suggest that the PRIIPs Regulation is being applied in a broadly consistent way and the cases of material inconsistencies are relatively limited.

(ii) ESAs' analysis

The ESAs have identified relevant inconsistencies in the application of the rules by PRIIP manufacturers since its implementation, and in view of this the ESAs have worked on Level 3 measures, such as Q&As or Supervisory Statements. In particular, most recently, the ESAs identified different approaches taken by certain PRIIP manufacturers to describe the main features of the product, including practices that were not considered to provide clear information, such as the use of technical or legalistic language.³⁷

In terms of the areas where stakeholders identified some relevant inconsistencies, such as regarding the scope of the PRIIPs Regulation, some of these also correspond to areas where the ESAs had faced challenges to fully address inconsistencies during their supervisory convergence work. Consequently, these are areas which the ESAs had identified as requiring adjustments or clarifications to the PRIIPs Regulation, as discussed separately in this advice.

For the other topics identified by stakeholders, such as regarding transaction costs or real estate costs, the ESAs will consider the relevance of additional Level 3 guidance.

As part of the work on this advice, the ESAs also used a tool to conduct certain automated checks on the information included in the KID, on the basis that this could provide an indication of the extent of consistency in application, at least for specific elements within the KID.

The ESAs used the sample of KIDs described above in Section 3.1.1. The ESAs performed two types of analysis relating to the presentation of costs and the inclusion of required phrases or narratives. The findings indicate issues of non-compliance and might suggest potential inconsistencies in the application. For the presentation of costs, differences between the total costs shown in a first table (Table 1 – 'Costs over time') and the sum of the costs in a second table (Table 2) on the composition of costs (i.e. cost components) were found in a material share of KIDs, around 8% of the whole sample. For the use of required phrases, this varied significantly between the languages used, but all language groups contained a relevant number of KIDs which deviate from the prescribed wording. For five languages, there were cases of KIDs with less than 50% of the required phrases. According to manual

³⁶ Resulting in a KID being made available for a certain PRIIP in one Member State, and not in others.

³⁷ The ESAs have worked on a Supervisory Statement on the 'What is this product?' section of the KID that is expected to be published shortly.

checks, cases of the required sentences being entirely missing do exist, but more frequently sentences are included with some variations. Further details on this analysis are provided in Annex 8.

3.3.3 Supervision of the KID

The ESAs conducted a survey with NCAs in order to request information on their supervision of the KID, including whether it is required in their Member State for the KID to be notified *ex ante* and the nature of the reviews conducted.

(i) *Ex ante* notification of the KID

The PRIIPs Regulation provides for the option for Member States to require the *ex ante* notification of the KID by PRIIPs manufacturers or person selling PRIIPs, to the competent authority for PRIIPs marketed in that Member State (Article 5(2)).

Ex ante notification of at least certain types of PRIIPs is required in eight³⁸ Member States involving 12 NCAs given that in some Member States the competencies are divided between different authorities. There are some differences in the approaches taken as follows:

- In four Member States *ex ante* notification is required for all types of PRIIPs, while in the other four Member States it is only for certain types of PRIIPs.
- In four Member States, the *ex ante* notification is required also in case of a significant update to the KID.
- Three NCAs require additional information to be submitted together with the KID. This additional information might include marketing materials or KID related data in a structured format.
- Three NCAs review all KIDs notified before the product is made available. This links to the time required for the process of *ex ante* notification, which varies between the Members States that require *ex ante* notification. This ranges from directly before a product is made available, to several weeks before a product is made available.

A number of these NCAs highlighted that *ex ante* notification is a crucial supervisory tool, which allows them to supervise the KIDs on an *ex ante* basis before they are published. Using this supervisory approach, retail investor detriment can be avoided and there is no need to repair it afterwards. In this context, *ex ante* notification of KIDs also supports the supervision of marketing materials on an *ex ante* basis, as the marketing materials should not contradict the KID (as discussed in Section 3.1.3).

Equally, some NCAs reported that they already have in place alternative systems to gather information on PRIIPs sold in their jurisdiction and find that an *ex post* notification is better adapted to their supervisory practices.

³⁸ Belgium, Finland, France, Italy, Latvia, Portugal, Slovenia and Spain.

The notification of the KID is also considered to have significant benefits where the supervision of the KID is conducted on an *ex post* basis, and where a risk-based approach is taken to the review of KIDs. The availability of this information can facilitate the cooperation and exchange of information between NCAs. It also supports NCAs to conduct market monitoring activities.

As stated in Section 3.3.2, the current divergence of approach between Member States was criticised by some respondents to the Call for Evidence and can be contrary to the aims of the single market and CMU.

Consequently, the ESAs consider that a broader use of the *ex ante* notification option would have material benefits. It is relevant to underline that notification in this context is intended to mean the submission of the KID to NCAs, and not the review or approval of the KID on an *ex ante* basis. On the other hand, it is recognised that there are significant resource implications for NCAs, such as to develop IT tools to be able to receive and store KIDs. In this respect, it can be noted that some NCAs that require *ex ante* notification opted to not require it for all types of PRIIPs and not necessarily for updated KIDs.

In addition, upcoming legislative developments can suggest the relevance to reflect on the costs and benefits of a possible extension of notification requirements.

First, the occasion of the inclusion of UCITS within the scope of PRIIPs, for which the existing approach is that the key investor information document (KIID) is sent to the competent authority, can raise the question of whether it is justified to have a different approach for different types of PRIIPs. For example, once UCITS are preparing a PRIIPs KID, the collection of KIDs for other types of PRIIPs, such as unit-linked IBIPs, would allow analysis to be conducted across product types based on the common metrics in the KID.

In this context, some questions have also arisen in relation to the obligation for UCITS to comply with the PRIIPs Regulation, hence to make available the PRIIPs KID instead of the UCITS KIID where UCITS are made available to retail investors, from 1 January 2023 onwards. In relation to the Directive (EU) 2021/2261, the ESAs would like to highlight the current lack of clarity related to the application, from 1 January 2023, of Article 82 of the UCITS Directive. Indeed, while until that date, UCITS (or their management companies) send their KIID to the home competent authority, it is unclear whether the reading of Directive 2021/2261 implies that from 1 January 2023:

- a) UCITS (or their management companies) need to send the PRIIPs KID (instead of the UCITS KIID) to the home competent authority (as per Article 82 of the UCITS Directive); or
- b) Whether this Article 82 would no longer apply, and UCITS (or their management companies) would not need to send their PRIIPs KID to any competent authority, except in those Member States where the *ex ante* notification option, allowed by the PRIIPs Regulation, has been implemented. And in that case, the notification would need to be made to the competent authority of the Member States where it is going to be marketed (host NCA).

The ESAs are of the view that it is urgent that more clarity is given on this topic of notification, and have sought the views of the Commission on this.

Second, the proposal for an ESAP developed by the Commission (see the Commission targeted consultation document of 20 January 2021), will mean that in the near future KIDs will need to be collected. The current proposal is that PRIIP manufacturers will need to submit KIDs to a national collection body, which, in the majority of cases, it is understood will be the competent authority for the KID.³⁹ A wider use of *ex ante* notification could therefore be complementary to the preparatory work for the ESAP and could bring a number of supervisory benefits (as described above) before KIDs are available in ESAP.

More generally, it will be important to consider further the interaction between an *ex ante* notification to NCAs and the ESAP, as well as the overall consistency of the entire ruleset applicable to PRIIPs. For example, in the amendments to the PRIIPs Regulation proposed within the ESAP legislative package, it is stated that when making public the KID, the PRIIP manufacturer shall at the same time also submit the KID to the collection body. It seems, therefore, that this can still be compatible with a separate *ex ante* notification requirement to NCAs, where an *ex ante* review of the KID is considered appropriate.

(ii) Supervision of the KID and inaccurate KIDs identified

The information provided by NCAs has indicated different supervisory approaches. Some NCAs revise KIDs systematically *ex ante* (using the *ex ante* notification option), while others apply a risk-based approach to supervise the KID, generally *ex post*.

Some NCAs have conducted supervisory reviews or exercises focused on reviewing the KID, including thematic reviews or questionnaires to verify compliance with the rules. Some NCAs have integrated the review of KIDs into their general ongoing supervisory actions. Others have focused their activities on issues raised in complaints or through other supervisory indicators.

The types of reviews conducted include plausibility and clarity checks of the information provided in the KID, as well as more in-depth analyses on a case-by-case basis or for a sample of products (e.g. checking the methodology used for calculation of performance scenarios).

A number of NCAs have developed more sophisticated techniques to analyse the information in the KID, including:

- One NCA reported using “R” software to collect KIDs from the PRIIP manufacturers’ webpages, to transform the pdf files into text files and to extract all relevant information from the KIDs (done with rule-based text mining algorithms).
- One NCA has developed a Proof of concept based on Natural Language Processing and Machine learning technology that is able to create usable structured data to analyse KIDs.
- One NCA reported having a specific computer application that allows reporting entities to directly input KID information on it, and that allows the extraction and analysis of this information.
- One NCA noted that it uses techniques (i.e. standard rule-based algorithms) to assess issues in credit institutions’ KIDs.

³⁹ The current proposal for ESAP for the PRIIPs KID is that Member States shall designate one of the officially appointed mechanisms referred to in Article 21(2) of Directive 2004/109/EC (Transparency Directive). The current list of mechanisms can be found here: [Access to regulated information \(europa.eu\)](https://ec.europa.eu/finance/press-releases/2021/01/2021-01-20-ec-commission-targeted-consultation-document-2021-01-20_en)

The information provided by NCAs indicates that a wide range of inaccuracies or supervisory issues have been identified during their supervision. These issues concern the publication or provision of the KID, the form of the KID and the contents of the KID reflecting most of the different sections of the template. Some of the issues identified include major inaccuracies, such as the complete absence of required sections. The issues referred to include:

- KID is not easy to find on the provider's website or is not accessible;
- KID is not provided to retail investors;
- Layout of the KID does not correspond with the template;
- Page limit exceeded;
- Parts of the KID are completely missing;
- No PRIIP manufacturer contact details in the KID;
- Lack of clarity in the text (e.g. use of technical jargon, use of standardised sentences due to an automatic process for creating KIDs, and poor translations);
- Issues related to the product description (e.g. mistakes in the characteristics, broad and inconsistent product categories used to describe the product, key elements missing, challenges to understand the text);
- Target market is too broad;
- Poor explanation of the capital protection (e.g. capital loss can be inferred only implicitly);
- Inconsistent information on the recommended holding period;
- Issues with the SRI and not accurately reported risks (e.g. mistakes in the SRI calculation or presentation, poorly reported liquidity and exchange rate risks, or lack of information on material risks not adequately captured by the SRI);
- Issues with performance scenarios or inconsistencies in the scenario values (e.g. approach to discretionary bonuses for IBIPs);
- Issues related to costs, charges and fees (e.g. use of wrong cost categories, higher commission charged than indicated, inadequate disclosure of penalties for early exit, or no cost tables);
- Lack of appropriate contact details for complaints;
- Misleading "disclaimers" regarding the information in the KID (e.g. in the section on 'other information').

In terms of the percentage of cases where inaccurate KIDs were identified, most NCAs were not able to provide specific information or were only able to provide information regarding specific exercises conducted and not regarding all supervisory activities. Detailed information on this is provided per Member State in Annex 9. The ESAs have not sought to combine this information into aggregate figures given the types of information provided varied between Member States and the difficulty to combine results from different supervisory approaches, and analyses of very different depth. It is also relevant to note that a number of NCAs highlighted that they might only review one or a limited number of KIDs from a particular PRIIP manufacturer, but that the findings from their review would normally have implications for various KIDs prepared by that PRIIP manufacturer (which would have similar issues or inaccuracies that would need to be corrected). However, the information is considered to provide an indication of the proportion of KIDs with inaccuracies. Generally, NCAs noted an improvement in the KIDs over the years, with less substantive issues being identified over time.

The ESAs encourage the Commission to consider how the expected amendments to the PRIIPs Regulation can best facilitate, as well as leverage, the preparation of the ESAP, including the role of the *ex ante* notification of the KID in this context.

The ESAs would like to highlight to the Commission the importance to clarify the effects of the upcoming application of the PRIIPs rules to UCITS from 1 January 2023 on the notification obligation for UCITS.

3.3.4 Number of mis-selling events before and after the introduction of the PRIIPs KID

(i) Introduction

The ESAs understand that the Commission is interested in data which could be used as a basis to consider whether the introduction of the KID has had an impact on the number of mis-selling events. The ESAs have sought to collect the data specified in the mandate, and requested information from NCAs on the number of relevant complaints they had received and sanctions that they had imposed.

However, the ESAs would also like to highlight the significant challenges to establish a causal link between the use of the KID and the number of mis-selling events. There are also challenges relating to the definition of mis-selling events, and using sanctions and complaints data may not always be representative. In particular, sanctions are one element of the toolbox available to NCAs after identifying issues, but, as discussed further in Section 3.4, other elements are also available to NCAs.

Regarding the information requested from NCAs, this was specified as follows:

- Information was requested concerning the complaints and sanctions relating to products within the scope of the PRIIPs Regulation in general, and not limited to complaints or sanctions about the KID itself.
- In terms of the mandate to cover events before and after the introduction of the KID, in order to cover similar time periods, data was requested for the years 2015-2017 and 2018-2021.
- Data was not requested on products subject to the temporary exemption in Article 32 of the PRIIPs Regulation (i.e. UCITS), given that KIDs were not prepared for these products in the period 2018-2021.

NCAs were also asked about any other relevant data they might have.

(ii) Complaints data regarding PRIIPs

The feedback from NCAs was as follows for complaints for the years 2015-2017:

- In total, 14 NCAs⁴⁰ were in a position to provide numerical data for this period. Other NCAs reported that they either have not received any complaints, are not competent to deal with

⁴⁰ ACPR, AMF, Bank of Lithuania, CMVM, CNB, CSSF, DGSFP, FSC, HANFA, KNF, LI FMA, MNB, MT FSA, RO FSA

individual consumer complaints, or do not have the data available to answer this question. In terms of the data provided:

- Of the 14 NCAs, most received single-digit or small double-digit numbers of complaints for each of the years between 2015 and 2017.
 - Five NCAs⁴¹ reported that they received around 75 to 200 complaints, and one NCA⁴² received more than 1,000 complaints per year in this period.
 - NCAs most often received complaints related to the lack, or poor quality, of pre-contractual information and poor service. Other complaints concerned a large variety of issues such as the blocking of redemptions, costs, other issues relating to the management of the product, and tax disadvantages.
- In total, four NCAs⁴³ shared data on the number of complaints received by investment firms and insurance undertakings between 2015-2017. The annual total number of complaints received by those entities ranged from 2,000 to 11,300 in the different jurisdictions. Complaints most often concerned the sale process, claims handling and contract amendment.

The feedback from NCAs was as follows for complaints for the years 2018-2021:

- In total, 17 NCAs⁴⁴ were in a position to provide numerical data for this period. Other NCAs reported that they either have not received any complaints, are not competent to deal with individual consumer complaints, or do not have the data available to answer this question. In terms of the data provided:
 - Most NCAs reported a one-digit or small double-digit number of annual complaints between the year 2018 and 2021.
 - Three NCAs⁴⁵ received between 60 and 180 annual complaints in this period and one NCA⁴⁶ received more than 600 annual complaints.
 - Another NCA⁴⁷ reported a decrease from over 75 complaints in 2018 to less than 40 complaints in 2020.
 - Not all of the 17 NCAs had data available for the year of 2021⁴⁸.
 - Some NCAs highlighted a slight increase in complaints during 2020 which might have been caused by the fluctuations in the financial markets and the uncertainties related to the Covid-19 situation. As with the previous period, NCAs most often received complaints in relation to the lack of, or poor quality of, pre-contractual information and poor service.
 - One NCA⁴⁹ that did not report any data for the period between 2015-2017 reported that they received 280 complaints in 2020 alone, while there had been only 64 complaints in 2019 and 13 complaints in 2018. The NCA explained that the complaints in 2020 related to leveraged products and this was due to total or partial losses on the value of the product, deriving from trading and valuation issues. According to the

⁴¹ CMVM, CNB, KNF, MNB, MT FSA

⁴² ACPR

⁴³ AT FMA, CNMV, IVASS, MNB

⁴⁴ ACPR, AMF, BAFIN, Bank of Lithuania, CONSOB, CMVM, CNB, CSSF, DGSFP, FI FSA, FSC, HANFA, KNF, LI FMA, MNB, MT FSA, RO FSA

⁴⁵ CNB, MNB, MT FSA

⁴⁶ ACPR

⁴⁷ KNF

⁴⁸ ACPR, CONSOB, MNB, MT FSA

⁴⁹ CONSOB

NCA, the anomalous price trend was not well identified in the KIDs taking into account the specific functioning of leveraged products. In view of these issues, the NCA requested a revision of the content of these KIDs by the relevant PRIIP manufacturers.

- In total, four NCAs⁵⁰ shared data on the number of complaints received by investment firms and insurance undertakings in this period. The total number of annual complaints received by those entities ranged from 1,400 to 9,200 across different jurisdictions. As with the previous period, complaints most often concerned the sale process, claims handling and contract amendment.

(iii) Sanctions data for PRIIPs

The feedback from NCAs was as follows for sanctions imposed between 2015-2017:

- Almost all NCAs did not impose sanctions for this period.
- One NCA⁵¹ issued a fine for inaccurate information which was provided for a complex financial product.
- Another NCA⁵² confirmed that it had imposed sanctions against product manufacturers or financial advisers for mis-selling – this concerned failings in the advice process or the incorrect offering of marketing documents.
- Another NCA⁵³ reported that 4 settlements were concluded and 2 sanctions were imposed. These 6 measures related to CFDs that had been offered in this jurisdiction without a prospectus.

The feedback from NCAs was as follows for sanctions imposed between 2018-2021:

- The large majority of NCAs did not impose any sanctions on PRIIPs in this period.
- Four NCAs⁵⁴ have issued a single-digit or small double-digit number of annual sanctions in their jurisdictions for the mentioned period.

(iv) Other data on mis-selling events

Almost all NCAs indicated they do not have such data. However, one NCA⁵⁵ reported that it had assessed data on litigation and disputes. According to their analysis, it is estimated that between 2016 and 2020, the number of out-of-court proceedings has gone down by about 80%. Court disputes and litigations went up between 2015 and 2019, but are estimated to have gone down in 2020. Most cases related to additional fees being charged.

⁵⁰ AT FMA, CNMV, IVASS, MNB

⁵¹ CMVM

⁵² AMF

⁵³ FSMA

⁵⁴ BAFIN, CNB, HANFA, MNB

⁵⁵ CNB

3.4 Assessment of the effectiveness of sanctions

Extract from the call for advice

An assessment of the effectiveness of the administrative sanctions, measures, and other enforcement actions for infringements of the PRIIPs Regulation.

3.4.1 Issues identified relating to the effectiveness of administrative sanctions or measures

The PRIIPs Regulation provides for specific rules on administrative penalties and other measures (Chapter V), assigning to the competent authorities – as defined in Article 4(8) of the PRIIPs Regulation⁵⁶ - a catalogue of powers to impose sanctions⁵⁷ for infringements of Article 5(1), Articles 6 and 7, Article 8(1) to (3), Article 9, Article 10(1), Article 13(1), (3) and (4) and Articles 14 and 19 of the PRIIPs Regulation.

In order to respond to the mandate from the Commission, the ESAs sought evidence from NCAs on the effectiveness of the PRIIPs sanctions regime.

To start with, based on the information reported to the ESAs in accordance with Articles 27 and 29 of the PRIIPs Regulation, it can be mentioned that only a small number of sanctions have been imposed by NCAs for breaches of the PRIIPs Regulation.⁵⁸

In this context, it is important to underline that the use of sanctions is one element of the toolbox available to NCAs after carrying out supervisory activities; other elements are also available to NCAs. Although substantive issues have been identified during supervisory reviews of KIDs (see Section 3.3.3 on the Supervision of the KID), NCA reported that, in many cases, meetings and written requests for explanations or other communications, such as formal letters, have been effective in addressing issues to PRIIP manufacturers to allow them to quickly fix the weak points detected in KIDs. Had these requests not been acted on in a timely manner, they could have resulted in formal sanctions.

In addition, the *ex ante* review of KIDs by the NCA means that sanctions are less likely to be imposed, but such reviews are only conducted by a small number of NCAs (see Section 3.3.3).

One example of a breach that was considered by one NCA to warrant a formal sanction is where there was a failure to provide the KID to the retail investor.

At the same time, while it was reported that the more informal supervisory measures taken, as described above, have been effective in addressing issues, a number of relevant issues or challenges relating to the sanctions regime were reported. First, one NCA mentioned that due to legal uncertainties regarding several specific aspects of the PRIIPs rules, in these cases it is expected to be more challenging to impose a formal sanction.

⁵⁶ Article 4(8) states as follows: “competent authorities’ means the national authorities designated by a Member State to supervise the requirements this Regulation places on PRIIP manufacturers and the persons advising on, or selling, the PRIIP.”

⁵⁷ Where the term “sanction” is used this is intended to refer to “administrative sanctions and measures” as provided for in the PRIIPs Regulation.

⁵⁸ The number of sanctions reported are as follows: two in 2019; eight in 2020; and 13 in 2021.

Second, several NCAs explained that different interpretations of the PRIIPs Regulation regarding the identification of the competent authority and the related application of the sanctions provisions had, in their view, inhibited some potential enforcement actions. Consequently, these NCAs highlighted the need for clarification as to the division of responsibilities between NCAs, where NCAs of more than one Member State are involved in cross-border situations.

In particular, in the case of potential non-compliance by a foreign PRIIP manufacturer, some NCAs explained challenges they had faced to collect the information which was important to decide on the type of action to be taken, as set forth by Article 25 of PRIIPs Regulation, which provides for a list of criteria to be followed by NCAs when deciding on the type of sanction or administrative measure to be issued⁵⁹. In view of this Article, these NCAs indicated that adequate information on the PRIIP manufacturer, their market share, their product catalogue and characteristics, the relevance and diffusion of their business (or of a certain PRIIP) at a national retail level (e.g., the number of retail investors performing investment activities and receiving a certain KID) is crucial.

When these NCAs tried to collect the abovementioned information requesting it from the relevant foreign PRIIP manufacturer, in most cases this information was not provided; thus it was necessary to send a request for assistance to the home authority of the PRIIP manufacturer. When the host authority tried to collect information from the home authority, the home authority sometimes had a different view about the interpretation to be given to PRIIPs rules referring to the identification of the competent authority and the relevant rules to be followed regarding sanctions. In such cases, the powers of the host authority were not clearly recognised so the request was deemed inadmissible.

In other cases, when these NCAs tried to collect the abovementioned information from the foreign PRIIP distributor, it was considered unclear which rules were to be followed, so if the request could be sent directly to the distributor according to the NCA's competence under the PRIIPs Regulation, or if the involvement of the home authority was necessary according to the applicable investment services rules (e.g. MiFID II or IDD). Thus, these NCAs explained that they had faced difficulties in approaching such distributors and obtaining the information needed to assess the impact of the potential non-compliance in terms of number of retail investors involved, number of transactions made and related volumes. In addition, in the cases when these NCAs requested assistance from the home authority of such distributors, some of them also faced challenges due to different interpretations of the relevant PRIIPs rules by the home authority, with the result that the host authority was not always able to collect the information requested.

Some further analysis of these challenges is included in the next Section 3.4.2.

Finally, a number of more specific points have been identified regarding the sanctions regime, including an uncertainty on the publication of sanctions that have been subject to an appeal and

⁵⁹ Article 25 states that 'The competent authorities shall apply the administrative sanctions and measures referred to in Article 24(2) taking into account all relevant circumstances including, where appropriate:

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the person responsible for the infringement;
- (c) the impact of the infringement on retail investors' interests;
- (d) the cooperative behaviour of the person responsible for the infringement;
- (e) any previous infringements by the person responsible for the infringement;
- (f) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.'

whether the structure of the PRIIPs Regulation could be improved, such as regarding the inclusion of the product intervention powers for insurance-based investment products.

3.4.2 Issues relating to supervisory competences and responsibilities in cross-border cases

The challenges for some NCAs to collect relevant information as explained in the previous Section 3.4.1 would suggest it might be necessary to strengthen the current provisions on NCAs' cooperation. In general, the home and host authorities should actively cooperate and exchange information and data with each other. In particular, the home authority should play an important role cooperating with the host authority in the case the latter asks for information or data deemed useful to conduct its supervision activities on foreign manufacturers, sellers or advisors of PRIIPs. This is considered important irrespective of the division of responsibilities between home and host authorities.

Yet, the existing provision in Article 20(1)⁶⁰ of PRIIPs Regulation already clearly sets out the duty for NCAs to cooperate with one another and exchange relevant information. Consequently, the ESAs consider that work could instead be done using Level 3 instruments⁶¹ to address the more specific application of the general duty in Article 20.

The ESAs also considered if clarifications or adjustments are needed regarding the identification of competent authorities and the extent to which the host NCA is competent under the PRIIPs Regulation in cross-border cases. In this context, it was noted that the definition of “*competent authority*” (Article 4(8), PRIIPs Regulation) makes reference to the national authorities designated by a Member State to supervise the requirements set forth by the PRIIPs Regulation, but neither this Article nor other operative provisions make reference to the place where PRIIPs are offered or distributed to identify the limit of the abovementioned competence.

Some NCAs have argued that the supervision of PRIIPs follows the division of responsibilities specified in the relevant sectoral rules, and in particular the supervision of the PRIIP manufacturer and accordingly the contents of the KID is primarily the competence of the home authority. In this context, it has been noted that:

- Recital 24 states that ‘This Regulation does not alter the allocation of responsibilities between existing competent authorities under existing passport arrangements. Competent authorities designated by Member States for the purposes of this Regulation should therefore be consistent with those competent for the marketing of PRIIPs under an existing passport, if any’. As a result, this can mean that where the passporting arrangements in other EU legislation allocate primary responsibility to the home authority, such as in Solvency II, MiFID II, UCITS and AIFMD⁶² regarding the PRIIP manufacturer, this also applies under PRIIPs.

⁶⁰ ‘For the purposes of the application of this Regulation the competent authorities shall cooperate with each other and, without undue delay, provide each other with such information as is relevant for the purposes of carrying out their duties under this Regulation and of making use of their powers.’

⁶¹ This work could either involve supplementing existing instruments applicable to the sectoral legislation, such as Protocols or BoS Decision on NCA collaboration or the development of new instruments specific to the PRIIPs framework.

⁶² Briefly, according to the home country “control” principle related to the sanctioning activity, the host authority has prior information obligations to the home authority for any violations of the sectoral regulations, and has the power to take administrative measures only on a subsidiary basis where the violation persists despite the measures taken by the home authority. It is also relevant to mention the case of branches where, for some frameworks, responsibilities are distributed between home and host NCAs.

- In addition, any clarification or adjustment to the role of home and host authorities should not undermine the functioning of existing passporting arrangements. In this context, the extension of the PRIIPs Regulation to UCITS from 1 January 2023 can be noted, for which the existing passporting regime has shown for many years its relevance, and effectiveness, and which is based on the principle of the competence of the home authority.
- The Commission Guidelines⁶³ on the application of the PRIIPs Regulation (point 22) state that the competent authority to be included in the KID is ‘the competent authority of the Member State where the PRIIP manufacturer is established, irrespective of whether that PRIIP manufacturer carries out activities across borders.’⁶⁴
- This application avoids a separation between the authority in charge of the supervision of KIDs, and the authority in charge of the supervision of other obligations on manufacturers, such as product oversight and governance duties, including product design, etc.

Equally, some NCAs have argued that competence is primarily or partially assigned to the NCAs of the Member State in which the PRIIP is offered or distributed, i.e. the host NCA. In this context, it has been noted that:

- Article 5(2) states that a Member State may require the *ex ante* notification of the KID to NCAs with reference to PRIIPs marketed in that Member State. This is complemented by recital 11 which indicates that this notification procedure can be used to assess compliance with the PRIIPs Regulation on an *ex ante* basis;
- Article 24(2) seems to provide the host as well as home authority with the power to impose sanctions, including to require the PRIIP manufacturer to publish a new version of the KID (point (d)). In this context, recital 24 is explicit regarding the right of the host authority to impose the sanction of an order to suspend the marketing of the PRIIP (as specified in Article 24(2)(b)). Furthermore, Article 22(2) indicates that the host, as well as home, authority can impose sanctions by acknowledging the possibility of possible duplication or overlap between NCAs when applying sanctions in cross-border cases.
- This application can be seen to take into account that KIDs must be made available to the retail investor in the official language, or in one of the official languages, used in the Member State where the PRIIP is offered or distributed (Article 7 of the PRIIPs Regulation), thus it is necessary for the supervising authority to be familiar with this language. It can also be seen as justified considering that in some cases PRIIPs offered or sold in multiple jurisdictions are different, due to adaptations to the domestic market⁶⁵.

⁶³ Communication from the Commission: Guidelines on the application of Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) of 7 July 2017 (2017/C 218/02).

⁶⁴ Article 8(3)(a) of the PRIIPs Regulation and Article 1(1)(d) of the PRIIPs Delegated Regulation require PRIIP manufacturers to indicate, in the KID, which is the competent authority that supervises the manufacturer in relation to the KID

⁶⁵ In many cases, PRIIPs manufactured by the same entity are offered or distributed in more jurisdictions, even with the same commercial name, but with some different characteristics and contents in the different countries so as to take into account the characteristics of the national markets. Such differences are reflected in the KID that, in these cases, cannot be therefore considered as a mere translation of a foreign-language native KID.

Consequently, notwithstanding the importance for NCAs to co-operate with each other, as stated in Article 20(2) and Article 22(2) of the PRIIPs Regulation, it might be relevant to clarify the respective responsibilities of the host and home authorities regarding the supervision of foreign PRIIP manufacturers, sellers and advisors.

A clarification can be also relevant regarding the competent authority to be named in the KID. Notwithstanding the Commission Guidelines covering this issue as referred to above, in view of the points set out in this section, there remains some uncertainty regarding whether there are cases where it is relevant to name the host authority in the KID. Consequently, a clarification ought to also ensure a consistent approach regarding this requirement, as well as ensure that appropriate information is provided to retail investors.

At the same time, as already indicated in recital 24, it is essential to take into account existing passport arrangements, as well as the division of competences in relevance sectoral legislation, given that any changes in relation to these arrangements can have a significant impact on the supervisory activities of NCAs. Therefore, before any changes are made to the PRIIPs Regulation, a thorough assessment of the interaction with these arrangements would need to be made, which the ESAs have not been able to conduct within the time constraints of the work on this advice.

3.4.3 Publication of sanctions following an appeal

Article 29 of the PRIIPs Regulation addresses the issue of the publication of sanctions and how it is linked to a potential appeal process. There is some uncertainty regarding the application of Article 29(1) which states that a ‘decision, against which there is no appeal...shall be published by competent authorities’.

Where a sanction is imposed and an appeal is lodged but that appeal is unsuccessful, it seems possible to argue that this case is not covered by Article 29(1). However, there does not seem to be a justification for treating this case differently to the case where a sanction is imposed and there is no appeal. One interpretation might be that after an appeal process has run, that appeal process becomes part of the overall sanction decision (i.e. it would be covered by Article 29(1)).

This issue is also relevant in other legislative frameworks with similar provisions on sanctions, such as IDD.

3.4.4 Other structural issues regarding the PRIIPs Regulation

The rules provided by the PRIIPs Regulation about sanctions and the supervisory system are composed by many Articles (from 15 to 29) which relate to different topics.

To start with, the provisions set forth in Articles 15 to 18 of the PRIIPs Regulation are referred to product intervention rules related to IBIPs only. Then, Articles from 19 to 21 are referred to complaints, general principles on cooperation between NCAs and to the processing of personal data.

Finally, Articles from 22 to 29 provide the rules on sanctions NCAs shall be empowered to issue, as well as on the conditions and procedures to be followed in applying these powers.

Advice on the effectiveness of sanctions

The ESAs would like to draw the Commission's attention to the fact that some questions have arisen regarding the division of competences between home and host authorities in the context of the application of the sanctions regime. Nevertheless, given the time constraints of the work on this advice, the ESAs have not been able to conduct a thorough analysis of the interaction between PRIIPs and the relevant sectoral rules, including applicable passporting arrangements, which is considered crucial as part of any assessment of the need for changes to the PRIIPs Regulation. Consequently, the ESAs stand ready to contribute to further work on this topic.

The ESAs recommend an adjustment to the PRIIPs Regulation to clarify that the rules regarding the publication of sanctions apply to the case where an appeal was lodged and was unsuccessful.

The ESAs invite the Commission to consider whether the PRIIPs Regulation could be better organised by:

- moving Articles 15 to 18 to a more appropriate EU legislative source, as they do not specifically refer to powers related to all the products in scope of PRIIPs Regulation, nor to the KID itself, but to a category of products, i.e., IBIPs (for other PRIIPs products, the product intervention powers are provided in MiFIR);
- moving Article 20 (referring to the general duty of cooperation between NCAs) to Chapter V, which is currently the part of the PRIIPs Regulation which specifically relates to administrative penalties and other measures (i.e. the sanctions system). In this way, Article 20 could be read as a guiding principle for NCAs in applying the PRIIPs Regulation, especially in cross-border cases.

3.5 Considerations regarding the content, structure, accessibility and provision of the KID, including in view of the use of digital media

Extract from the call for advice

An assessment of the extent to which the PRIIPs Regulation is adapted to digital media. This survey shall include an evidence-based assessment of:

- To the extent feasible, the actual use of various types of physical and digital media for delivering or displaying the PRIIPs KID to retail investors.
- To the extent feasible, the preferred digital or physical media for retail investors to access and read PRIIPs KIDs, and the appropriateness of the PRIIPs Regulation for allowing access to and readability of PRIIPs KID on such platforms.
- The appropriateness of the approach taken in the PEPP Regulation 2019/1238 for displaying the PEPP KID on digital media for the PRIIPs KID.

3.5.1 Introduction

The KID aims to promote informed and effective decision-making by providing consumers with information that is easy to read, understandable and comparable. At the same time, insights from behavioural research⁶⁶ have highlighted how challenging it is to use disclosures to retail investors as a regulatory tool to protect consumers and to promote sensible decision-making, given that consumers' decisions are not determined simply by reasoned deliberation, but are influenced by biases and other factors, such as inertia. There is, ultimately, a limit to the amount of choices that consumers can make. Also, they sometimes rely on heuristics to make complex choices, which entails the risk of suboptimal decision-making. Research suggests that consumers may not read pre-contractual disclosure documents and when they do, may not understand them or make decisions based on other factors, such as recommendations from friends or online influencers⁶⁷. It is critical to take into account this context when considering how disclosures, such as the KID, can best serve retail investors.

One important issue with the existing KID is that it combines market transparency objectives with consumer objectives, in a way that leads to the document being designed for very different target audiences. This has resulted in the KID being too long and detailed for many types of retail investors⁶⁸, even though the starting point was precisely to avoid this outcome. Linked to this, there can be a clearer focus on findings from behavioural research in the drafting of EU legislation, such as for the PRIIPs KID⁶⁹ and consumer testing has come too late in the process. Once a long list of disclosure

⁶⁶ See, for example, [EIOPA Report](#), Good practices on information provision for DC schemes, Enabling occupational DC scheme members to plan for retirement, 24 January 2013, or Oxera, [Review](#) of literature on product disclosure, 29 October 2014.

⁶⁷ See, for example, [AFM Report](#) "Principles for the use of consumer behaviour insights," 30 March 2021,

⁶⁸ This point has been made by stakeholders. It was also suggested by consumer testing conducted on part of the KID by the Commission in 2019, which showed a low level of understanding of the product features (Consumer testing services - Retail investors' preferred option regarding performance scenarios and past performance information within the Key Information Document under the PRIIPs framework. FISMA/2019/016/C).

⁶⁹ This is also the case for example for the PEPP KID or the SFDR disclosures.

requirements are already set down in the Level 1 legislation, it is then very difficult to provide genuinely consumer-friendly solutions within this framework, even when using consumer testing.

Another key theme is that digitalisation trends are not adequately captured in the KID. Although the current PRIIPs Regulation is supposed to be technology-neutral, it was mainly designed without considering digital distribution, and certainly before the “app revolution”. This advice on PRIIPs takes into account the ESAs’ advice to the Commission on digital finance⁷⁰, as well as the parallel work under the Calls for advice on Retail Investor Protection to EIOPA and ESMA. This advice addresses similar themes, but focuses more specifically on the implications for the PRIIPs KID.

The sub-sections below consider first overarching issues regarding the content and structure of the KID, which, while linked to the issue of the presentation of the KID on digital media are also relevant to the KID in general (i.e. also when a paper form is used), before addressing issues regarding the use of the KID on digital media more specifically.

3.5.2 Analysis regarding how to improve the content, structure and accessibility of the KID

Any disclosure document should be designed starting from behavioural principles: consumer testing is critical in this respect and from a regulatory perspective this needs to be done also as part of the process of drafting the Level 1 rules (as well as the Delegated Regulation) so that the choices at both levels reflect behavioural insights. The ESAs therefore recommend to the Commission that before introducing changes to the PRIIPs Regulation, appropriate consumer testing is conducted.

The ESAs are of the view that the KID would work better if it were presented in a simpler and more user-friendly format, without however depriving the retail investor of useful and relevant information (see possible layering approach discussed below). These issues relate also to the PRIIPs Delegated Regulation, but some changes are considered necessary regarding the PRIIPs Regulation.

Article 8 of the PRIIPs Regulation lays down the structure and contents of the KID including the sequence or order and title of the different sections, as well as substantive details on the contents of the KID. Consumer testing should be done before specifying these details on the contents and order of the information. Alternatively, these elements could be specified in the Delegated Regulation on the basis of consumer testing.

In terms of the details of the content of the KID, while all of the elements in the existing PRIIPs Regulation can be seen as relevant and, in particular, it is essential that consumers are appropriately informed about the risks and return profile and costs of products, the optimal way to present the information (e.g. in monetary or percentage terms or both) and the amount of detail that is relevant for the KID (compared to other types of disclosures) should be subject to consumer testing. For instance, when designing the KID it would be relevant to be able to test first on retail investors:

- Whether the details on the narrative explanations to accompany the SRI (Article 8(3)(d)(i)) are understood by retail investors;

⁷⁰ [Joint ESAs Report on Digital Finance | Eiopa \(europa.eu\)](#)

- The relevance to disclose the assumptions underlying performance scenarios (Article 8(3)(d)(iii)) given the potentially technical nature of this information;
- The nature of the breakdown of cost information, e.g. based on the timing of the costs (one-off or recurring costs as indicated in Article 8(3)(f)) or based on the type of costs (distribution, administrative, etc.);
- How different types of cost information are best understood by retail investors (e.g. in monetary or percentage terms or both) (Article 8(3)(f))⁷¹.

A more user-friendly format could entail allowing the use of layering (see further sub-section 3.5.3 below), using icons as are used in various consumer disclosure documents⁷², and thinking if and what type of very short-form summaries, such as dashboards, labels or QR codes, can assist retail investors.

In particular, the ESAs' experience with the current KID template, is that the order of the template might not be optimal and it should be possible to test some alternative approaches. For example, for certain products, the initial sections of the document up to the end of the 'What is this product?' section may cover the whole of the first page or more, and also include a large amount of text. This might deter certain types of retail investors from reading the (full) document and also means that some vital information, such as on the SRI or the holding period / duration of the product are not sufficiently prominent. This was mentioned by some respondents to the Call for Evidence and also reflects behavioural research regarding the challenges to engage consumers and promote the use of disclosure documents.⁷³ The prescriptive sequence of the template is also considered to inhibit the template being designed in a way that is fully compatible with smartphone usage (see sub-section 3.5.3 below on digital media).

In a paper or PDF document, an approach which has led to good results in consumer testing⁷⁴ and has been well received by external stakeholders, is considered to be the PEPP KID. The document includes a "dashboard" which highlights or summarises, at the top of the document, the essential information presented in the document (see example below). The PRIIPs legal framework should make it possible, in case it is deemed appropriate, to implement such an approach for the PRIIPs KID, and if necessary changes should be made to the PRIIPs Regulation to allow for this. The contents of such a dashboard would need to be adjusted for PRIIPs, but, subject to consumer testing, it might include similar elements to the one for PEPP such as, the name of the PRIIP, the holding period, a total cost figure, the SRI, some information on performance, any sustainable objective, and information on whether there is a guarantee. If such a dashboard were included, the aim would be to still keep to the current three pages limit, given the importance of the KID being concise.

⁷¹ By way of comparison, it is not specified in the PRIIPs Regulation how the information on performance scenarios should be presented, for example whether in monetary or percentage terms.

⁷² For example in the SFDR disclosures, the PEPP KID and the Insurance product information documents (IPID) under IDD.

⁷³ [Ben-Shahar & Schneider, 2011](#); [Loewenstein, Sunstein & Golman, 2014](#)

⁷⁴ [pepp-consumer_testing_final_report.pdf\(europa.eu\)](#)

Example of “Dashboard” in the PEPP KID



Pan-European Personal Pension Product (PEPP)
Key Information Document

This document provides you with key information about this Pan-European Personal Pension Product (PEPP). It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this personal pension product and to help you compare it with other PEPPs.

QR code, which navigates consumers to the electronic version of this KID

PEPP at a glance



If you contribute: **€100/month**
for a period of: **40 years**
you could receive: **€xx,xxx to €xx,xxx**
...depending on how the markets and your investments perform



Annual costs: **xx% of your accumulated savings**



Lower risk
More stable

Higher risk
But a greater chance of higher rewards

This pension product has been classified as **1/2/3/4** out of 4

This PEPP does not/ provides a guarantee
(see information below)

Provider logo

The retirement product described in this document is a long-term product with limited redeemability which cannot be terminated at any time.

Product name: [Name of the PEPP]

Provider: **xxxx xxx**

Registration number: **xxxx xxx**

Competent authority: **xxx**

Product type: **xxx**

Date: **DD Month YYYY**

Furthermore, there should be a more explicit link between the nature of the KID and the target market and product type (including complexity level). This can be seen as part of the PRIIP manufacturer complying with paragraphs 1 and 4 of Article 6 of the PRIIPs Regulation. However, the ESAs consider that it should be explicit that the PRIIP manufacturer is required to take into account the characteristics of the type of retail investor to whom the PRIIP is intended to be marketed when drafting the KID, e.g. the terminology or language used should reflect the knowledge and experience of the intended retail investor.

The ESAs have observed, and this was also commented on by a respondent to the Call for Evidence, that the KID is not always easily found and accessed on the website of PRIIP manufacturers.⁷⁵ This principle of easy accessibility should therefore be reflected in Article 5(1) of the PRIIPs Regulation, and could be further specified in the PRIIPs Delegated Regulation or at Level 3. Moreover, it could be relevant to specify that the obligation to publish the KID on a website, also applies in case a PRIIP manufacturer does not have its own website.

3.5.3 Digital media

(i) Evidence regarding the use of digital media

⁷⁵ One respondent to the Call for Evidence stated that ‘Some manufacturers (i) include the full list of links to KIDs in a website, (ii) others include a searching tool and some others (iii) only allow to read the KIDs to clients that have certain information (for example the ISIN) or (iv) that enter into the private website using clients’ passwords.’

In order to respond to the mandate from the Commission, the ESAs sought evidence from external stakeholders, as well as from NCAs on the use of digital media.

Quantitative evidence was provided by several individual PRIIP manufacturers on the extent to which the KID is used in a digital form⁷⁶. However, besides these small number of cases, the feedback provided was qualitative. The ESAs were not able to gather information on the actual preferences of retail investors. In particular, from the feedback, it was also not possible to distinguish between the extent to which an expressed preference for using digital media reflected the preference of retail investors or only of PRIIP manufacturers and distributors.

The main themes to emerge from the feedback are considered to be the following:

- The limited quantitative data that was provided suggests that the use of digital media is significant, but still varies significantly across Member States.
- The qualitative input provided also suggested significant variation across Member States with digital media being clearly the dominant medium in certain Member States, but paper still dominant in others (although digital is increasing).
- Despite the fact that the provision of the KID on paper is the default approach in this case, the use of digital media seems to be increasing where the product is offered on a face-to-face basis.
- The increasing use of smartphones was frequently mentioned, as well as that working with the KID in PDF form was not very compatible with smartphone use.
- In terms of online delivery, email or online client / customer portals seem to be more frequently used than websites.

(ii) Provision of the KID

Article 14 of the PRIIPs Regulation lays down rules regarding the types of media that can be used to provide the KID to the retail investor. It is specified that the use of paper format should be the default option where a PRIIP is offered on a face-to-face basis, but that it is also possible to provide the KID using a durable medium other than paper or by means of a website, if certain conditions are met. These conditions include, for example, that the retail investor has been given the choice between paper and the use of another durable medium or website.

As referred to in the mandate from the Commission, the PEPP Regulation provides a somewhat different approach regarding the use of digital media. The rules regarding the distribution of the PEPP KID either electronically or via another durable medium are in Article 24 of the PEPP Regulation. 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 is an overarching issue that applies across different legislative contexts. It was stated in the Joint ESA Report on Digital Finance that EU financial regulation should not prevent financial institutions

⁷⁶ Two respondents to the Call for Evidence stated that documentation is provided digitally in over 90% of the cases. One respondent stated that digital delivery was used in well over 50% of cases, and another that the use of digital delivery had increased from 21% at the beginning 2020 to 26% in June 2021.

from providing pre-contractual and/or contractual information in electronic format.⁷⁷ Similar approaches have been introduced or are being considered both for MiFID II⁷⁸ and IDD⁷⁹.

In terms of the responses to the Call for Evidence:

- A clear majority of respondents supported moving to a digital “by default” approach and referred to the approach now introduced for MiFID II as a reference point as well as PEPP.
- Various respondents highlighted the importance to have consistency in approach between the relevant legislation so that the same medium can be used with a retail investor during the overall sales process.
- A minority of respondents considered that the existing rules do not impede the use of digital media, such that a change of approach did not seem necessary.

The ESAs support extending the approaches referred to above of more of a “digital by default” regime to the PRIIPs Regulation, while still importantly retail investors being informed about their rights to ask for the information on paper, such as in PEPP and MiFID II. At the same time, the ESAs consider it important that consistent rules apply to the different investor protection disclosures that need to be provided to a particular retail investor, in particular consistency between the rules for the KID and those in IDD and MiFID II respectively, depending on whether it is an IBIP or a PRIIP. Consequently, subject to whether the co-legislators would ultimately provide for consistent rules across all retail investor protection legislation, this consistency could be achieved by directly referring in the PRIIPs Regulation to the equivalent rules in MiFID II and IDD (which are expected to be revised)⁸⁰.

(iii) Analysis of the extent to which the KID is adapted to digital media

Making disclosures more fit for purpose in a digital context is a fundamental part of improving disclosures in general. If done correctly, digital or online information offers many opportunities for presenting information more attractively and simpler than in paper form. The advantages are, for example, the application of interactive elements, such as menu features in an app, infographics, videos, contents sidebars and images. Visually appealing and accessible disclosures can make information easier to read and contribute to guiding potential investors with little or no digital skills through the process more easily. At the same time, future regulatory and supervisory tools will need to take into account the challenges arising from digitalisation and potential for much quicker decisions. For example, research shows that the level of comprehension on a computer screen is lower than on paper⁸¹. It can also be easier to take advantage of consumer biases online.

⁷⁷ See page 56 of the Report.

⁷⁸ Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis, (OJ L 68, 26.2.2021, p. 14).

⁷⁹ [Eiopa consults on its proposals on Retail Investor Protection | Eiopa \(europa.eu\)](#)

⁸⁰ This type of approach is currently taken to identify when a comprehension alert needs to be included in the KID (Article 1, second subparagraph of the PRIIPs Delegated Regulation).

⁸¹ [“Effects of VDT and paper presentation on consumption and production of information: Psychological and physiological factors” \(2005\), Wästlund, Reinikka, Norlander, Archer: “The results show that performance in the VDT \[video display terminals\] presentation condition where inferior to that of the Paper presentation condition for both consumption and production of information.”](#)

[“Reading linear texts on paper versus computer screen: Effects on reading comprehension”, December 2013, International Journal of Educational Research 58:61-68: Mangen, Walgermo, Brønck: “Conclusion: Main findings show that students who read texts in print](#)

To start with, as indicated above regarding the format of the KID in general, the use of visual information, such as infographics and images, can clarify written text, make the layout of a document more clearly visible and provide insight into complex terms and processes, and thus should also be possible for the PRIIPs KID. One study of visualisation of key information⁸² that investment funds are obliged to publish shows that infographics can help potentially vulnerable investors to take better investment decisions, while not causing any harm for more experienced investors.

Second, the ESAs assessed the use of layering for the PRIIPs KID taking into account the approach taken in the PEPP Regulation. In response to the Call for Evidence, the majority of stakeholders including consumer associations and in general stakeholders representing insurers and asset managers expressed support for being able to present the KID in a layered format. At the same time:

- Some respondents highlighted certain aspects regarding how layering would be implemented, such as the importance to define the elements presented in different layers, or that layering should not result in the length of the document being increased.
- Numerous stakeholders stated that PEPP has not yet been implemented and that it is too early to draw conclusions.
- Some respondents did not favour a layered approach for certain types of products (mainly from the banking / structured products sector) on the basis that all the information in the KID should be given equal prominence.

While it is recognised that the PEPP KID has not yet been implemented, this approach follows other experiences and studies, which have demonstrated the benefits of layering.⁸³ In particular, the use of the layered information in a digital context is considered to bring substantial benefits including:

- It allows disclosure to cater to different types of retail investors with heterogeneous information preferences and in particular can avoid an information overload for retail investors.
- It can help, in particular, to focus the attention of retail investors on the most important information, allowing them to be informed about other relevant information in subsequent levels.
- It can also be used to help to explain technical terms (e.g. the use of glossaries through a mouse roll-over or pop up) or facilitate engagement by the retail investor with interactive tools (e.g. QR codes).

In terms of the PRIIPs rules, the approach in the PEPP Regulation is considered to be an appropriate reference point, including that the application of the layering would be defined in the PRIIPs Delegated Regulation. The PRIIPs Delegated Regulation could then, based on consumer testing, specify the vital information to be included in the first layer, and avoid that crucial information would be given less prominence. In addition, navigating between different layers should be straightforward, for example,

scored significantly better on the reading comprehension test than students who read the texts digitally. Implications of these findings for policy making and test development are discussed’.

⁸² Ruben Cox, Peter de Goeij, “Infographics and financial decisions,” [P20200624 Netspar-Design-Paper-148-WEB.pdf](#)

⁸³ See for example, [Technical advice on the development of pension tracking systems | Eiopa \(europa.eu\)](#)

for hyperlinks to more in-depth information - these should not only be easy to click on, but it should also be easy to navigate back to the initial screen.

Third, the digital presentation of the KID should be such that it is easy for the reader to identify particularly relevant sections and vital information or move around within the “document” in a way that is meaningful to them. In practice, this can be achieved through a menu feature in an app or a contents sidebar or similar feature on a webpage, which the reader can use to immediately go to different sections of the disclosure (for example to information on risks, the costs of the product, or how to complain).

Fourth, it should be possible for the KID to be adaptable to the device used, and the importance of being able to read the KID on a smartphone was a point made by numerous respondents to the Call for Evidence. This entails to use a format and format size that is easily readable and does not require scrolling too much or using the zoom function to read the information. On the other hand, where the length of the information is such that it cannot be shown within the display area in its entirety, leading to the implementation of a scrolling mechanism to view different parts of the document, it should be ensured that retail investors cannot conclude the contract before scrolling down the entire information to the very end. It is also necessary to avoid long columns and consider how to manage the possibility of numerous different layers. These elements could be specified in the PRIIPs Delegated Regulation following consumer testing. However, as already mentioned, the existing requirement in Article 8(1) of the PRIIPs Regulation setting out the sequence of the information in the KID is expected to inhibit the optimal design of the KID, in particular the ability for it to be appropriately adapted to different devices.

The digital use of the KID could also facilitate more inclusivity by, for example, adding features to make the information accessible for blind or partially sighted consumers. This can be achieved through the presentation and format by providing, for example, sufficient contrast between colours, making it possible to enlarge font size and limiting colour in the interface⁸⁴. If audio or video is used, a speed of speaking and volume of sound should be used that ensures that the information is understandable.

A number of respondents to the Call for Evidence from the asset management sector stated that retail investors prefer to use online interfaces rather than “documents”. It was explained that these allow retail investors to personalise the information, such as the holding period or investment amount, as well as choose how the information is presented, for example in a graph or a chart. The ESAs agree that digitalisation can facilitate more consumer-centricity and interactive tools to engage with retail investors, and that this could make the information more appealing and easier to understand. A more interactive form of the KID can also still allow for comparison between products, provided that the same parameters are used as a basis for the different metrics in the document, such as the information on performance or costs. At the same time, this raises the question of whether such information is part of the regulatory disclosure or a separate tool. Article 33(4) of the PRIIPs Regulation already requires an assessment relating to the use of online calculator tools. Furthermore, a recent report on the investment funds market in the EU by the European Court of Auditors recommends (Recommendation 3(c), page 47) that by 2024 ESMA should, ‘develop a tool allowing investors to

⁸⁴ [How to Make Websites Accessible for the Visually Impaired | Fuzzy Math](#)

obtain information about all funds on offer that respond to certain criteria, and to compare the costs and performance of those funds'.⁸⁵ In the context of the current KID, the requirement to publish the document before the product is made available means that this form of the KID, by its nature, includes generic elements and is static. However, as discussed also in Section 3.9 (MOPs), it would be beneficial to distinguish between the KID published on the manufacturer's website and the KID provided to the retail investor.

3.5.4 Machine readability and European Single Access Point

The ESAs stated in their Final Report following the review of the PRIIPs Delegated Regulation (JC 2020 66) that it would be beneficial for the KID to be prepared in a format that allowed the information to be readily extracted by an IT tool (machine readable). In the meantime, the European Commission has adopted proposals for the ESAP. The ESAP is intended to provide public and free access to EU level financial and sustainability related information from a single access point. This information would include *inter alia* the PRIIPs KID and all the information would be in a data extractable⁸⁶ or machine-readable⁸⁷ format. It is proposed that data is submitted to the ESAP from 1 January 2026. It is also proposed that this is based on an Implementing Technical Standards (ITS) to be developed by the Joint Committee, including for which information a machine-readable format is required (instead of data-extractable format) and, in case it is required, which machine-readable format is to be used. In setting out which machine-readable format is to be used, the Joint Committee will have to assess the advantages and disadvantages of different machine-readable formats (e.g. XBRL format) and conduct appropriate field tests for that purpose.

At this stage, it is not clear whether the proposals made as part of this review of the PRIIPs Regulation will be implemented before or after 1 January 2026 or whether there would be any changes in the timeline for the implementation of ESAP. In this context, the ESAs think that it can be relevant to use the occasion of this review to also include a requirement in the PRIIPs Regulation for the KID to be machine-readable. This can be complementary to the preparatory work for the ESAP and would potentially allow for the introduction of machine readable KIDs earlier than under ESAP, but it will be important to coordinate with and leverage other regulatory initiatives in this area.

In addition, it is important to note that based on the current content of the KID the information in the ESAP would not include information on past performance, given, under the new rules arising from the revised PRIIPs RTS⁸⁸, this information is to be published separately (e.g. on a website). The ESAs would like to highlight the relevance of this information being included in the ESAP, either through this information being included in the KID itself (as proposed in Section 3.8), or through an amendment to the ESAP proposals.

⁸⁵ [Special Report 04/2022: Single Market for investment funds \(europa.eu\)](#)

⁸⁶ 'Data extractable format' means any electronic open format as defined in Article 2, point (14), of Directive (EU) 2019/1024 that is widely used or required by law, that allows data extraction by a machine, and that is not only human-readable.

⁸⁷ 'Machine-readable format' means a file format structured so that software applications can easily identify, recognise and extract specific data, including individual statements of fact, and their internal structure; (Article 2, point (13), of Directive (EU) 2019/1024).

⁸⁸ Commission Delegated Regulation (EU) 2021/2268 of 6 September 2021

The ESAs recommend the following in relation to the content, structure and accessibility of the KID:

- In order to ensure that the KID is clear, succinct and comprehensible and to build on the insights of behavioural research, consumer testing should be conducted in relation to the sequence and title of the different sections and the details of the contents of the KID set out in Article 8(3) of the PRIIPs Regulation. Alternatively, it should be possible to specify these elements in the PRIIPs Delegated Acts on the basis of consumer testing.
- As needed, changes should be made to the PRIIPs Regulation so that it is possible, if deemed appropriate based on consumer testing, to include a summary of the most essential information at the top of the KID, such as in the form of a dashboard.
- The PRIIP manufacturer should be required to take into account the characteristics of the type of retail investor to whom the PRIIP is intended to be marketed.
- The PRIIPs KID should be easy to access from the website of the PRIIP manufacturer.

The ESAs recommend that the rules regarding the provision of the KID should be consistent with the equivalent rules regarding other retail investor protection disclosures, such as in MiFID II and the expected upcoming revision of IDD.

The ESAs recommend that in order to ensure that the KID is adapted to digital media and the opportunities of digital disclosure can be harnessed, changes should be made to the PRIIPs Regulation, such as to remove the second subparagraph of Article 8(1). It should be possible to include visual information, present information in a layered format and adapt the format and structure of the template for use on different devices, in particular smartphones. It should be possible to use the KID as an interactive tool (an interface, rather than a mere document), so that it is easier for the consumer to compare between products.

The ESAs recommend that it should be possible for PRIIP manufacturers to provide a more personalised or tailored KID that complies with the relevant requirements in the PRIIPs Regulation and Delegated Regulation without needing to publish that KID first on its website.

The ESAs recommend that it should be required under the PRIIPs Regulation for the KID to be prepared in a machine readable form.

The ESAs recommend that information on the past performance of the PRIIP should be included within the proposed ESAP. This involves preferably the inclusion of this information in the KID itself (as proposed in Section 3.8) and, in the meantime, an amendment to the ESAP proposals to refer to the information published separately on past performance in accordance with Article 8(3) of the PRIIPs Delegated Regulation.

3.6 Scope of the PRIIPs Regulation

Extract from the call for advice

An examination of the following questions concerning the scope of the PRIIPs Regulation:

- whether the exemption of the products referred to in Article 2(2) points (d), (e), and (g) of the PRIIPs Regulation from the scope of PRIIPs should be maintained, in view of sound standards for consumer protection, including comparisons between financial products;
- whether the scope of the PRIIPs Regulation should be extended to additional financial products.

3.6.1 Extension of the scope of the Regulation to additional financial products

Regarding the potential extension of the scope of the PRIIPs Regulation, the feedback from the ESAs' Call for Evidence can be summarised as follows:

- The consumer associations that responded argued that the scope of the PRIIPs Regulation should in general be extended, and in particular emphasised its relevance for additional pension products.
- Almost all other stakeholders, including respondents representing industry stakeholders, did not support extending the scope of the PRIIPs Regulation.

The experience of the ESAs is that challenges have arisen with the application of the KID due to the following factors:

- The very broad range of products included within the scope of the PRIIPs Regulation.
- The aim to have a high degree of comparability and harmonisation and thus the use of a highly standardised and prescriptive template.
- Some uncertainty regarding the application of the scope to certain types of products, such as bonds.

In this context, there are challenges to prescribe a template that provides appropriate information for this wide range of products, as well as for all of the individual products that might fall within the scope.⁸⁹ The ESAs experience is that, while the PRIIPs KID has brought improvements for certain types of products and increased transparency, it has not yet fully achieved its objective of providing retail investors with access to clear, succinct and comprehensible information.

Consequently, while it is essential to continue to improve transparency regarding retail investment products and promote clear and engaging communications to retail investors, as a general approach, the ESAs are cautious at this stage as to whether these aims will be fostered by an extension of the scope of the PRIIPs Regulation to additional types of financial products. The ESAs consider that these

⁸⁹ See further Section 3.7 for some examples.

objectives would be better met if a more differentiated approach could be taken between different types of products (see Section 3.7), and in turn an extension of the scope might then be justified.

3.6.2 Exemption of securities referred to in Article 2(2), point (d) of the PRIIPs Regulation⁹⁰

The ESAs analysed the types of securities that are expected to be captured by this exemption (see Annex 10 for further details) and it can be noted that:

- The exemption in point (d) refers to certain types of securities that were exempted from the obligation to provide a Prospectus under Directive 2003/71/EC⁹¹. This Directive has since been repealed and replaced by the Directive 2010/73/EU⁹² and Regulation (EU) 2017/1129⁹³. Some of the securities that were exempt from Directive 2003/71/EC are no longer exempt from the current Prospectus rules.
- These securities would not necessarily fall into the scope of PRIIPs without this explicit exemption. In particular, for some of the securities in order to fall within the Prospectus exemption they cannot contain certain features that are associated with PRIIPs, such as being convertible or being linked to a derivative instrument.
- In some Member States it is understood that these exemptions do not have a material impact given that the securities do not exist or are not sold to retail investors.

Regarding the feedback from the Call for Evidence, almost all respondents, the majority representing industry stakeholders, did not support removing the exemption for the types of securities specified in point (d). However, one respondent argued in favour of the use of the KID for all these types of financial instruments.

Based on the analysis conducted and feedback received, the ESAs are of the view that the exemption can be maintained while providing for sound standards of consumer protection and comparison between financial products. In particular the ESAs:

- Consider that for these types of securities, the fact that they are exempt from obligations under the Prospectus Regulation is an appropriate reference point regarding the relevance of these securities being subject to the KID obligations, i.e. one of the objectives of the KID is to be a concise summary document that might sit “above” a longer more detailed pre-contractual disclosure document such as a prospectus.⁹⁴

⁹⁰ Securities as referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC

⁹¹ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

⁹² Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 327, 11.12.2010, p. 1).

⁹³ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12–82).

⁹⁴ For example as indicated in Article 6(2) of the PRIIPs Regulation.

- Took into account that the PRIIPs Regulation targets packaged or wrapped assets.⁹⁵

At the same time, the ESAs suggest to align and update the reference to the Prospectus Regulation within the PRIIPs Regulation so that any instruments, which are no longer exempt under the Prospectus Regulation, would similarly not benefit from the exemption under PRIIPs.

3.6.3 Exemption of pension products referred to in Article 2(2), points (e) and (g) of the PRIIPs Regulation⁹⁶

The ESAs collected information from NCAs regarding the types of pension products which currently fall within the scope of these exemptions.

Regarding point (e), the ESAs understand that in almost all Member States this exemption is applied to exclude types of individual or collective pension schemes offered by insurers or asset managers. However, there is variation, in particular, in the extent to which individual or personal pension schemes have been deemed to fall in scope. In some Member States, all pension products are considered to meet the conditions in point (e), while in other Member States only specific types of pension products are considered to meet these conditions. Regarding point (g), the ESAs understand that this exemption is only applicable in a small number of Member States, as such products do not exist in other markets.

Similar feedback was received from the Call for Evidence as for the exemption in point (d), since almost all respondents, the majority representing industry stakeholders, did not support removing the exemptions for these types of pension products. While, the consumer associations argued in favour of extending the scope, stating that products for retirement purposes are comparable to other types of investment products.

The information gathered from NCAs might suggest that there are some differences between Member States in the application of these exemptions, in particular point (e), and some questions were raised regarding the features which mean a product is deemed as 'serving primarily retirement purposes'. In the time available to deliver this advice, the ESAs have not been able to conduct a thorough analysis of the extent to which these differences are based on actual differences in the types of national personal pension products.

If greater consistency were to be aimed for this could be addressed in three main ways:

1. Remove the exemption for personal pension products
2. Extend the exemption to capture all types of personal pension products
3. Refine the criteria to more precisely specify the types of pension products that are exempted

⁹⁵ As indicated for example in recital 6 '...For all those products, investments are not of the direct kind that is achieved when buying or holding assets themselves. Instead these products intercede between the retail investor and the markets through a process of packaging or wrapping together assets so as to create different exposures, provide different product features, or achieve different cost structures as compared with a direct holding. Such packaging can allow retail investors to engage in investment strategies that would otherwise be inaccessible or impractical, but can also require additional information to be made available, in particular to enable comparisons between different ways of packaging investments'.

⁹⁶ Point (e) states '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; point (g) states '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.'

The ESAs are of the view that first approach is not preferred and that the risks that the information provided for these products may not be appropriate if they were subject to PRIIPs outweighs any concerns regarding inconsistencies. As recognised in recital 7 of the PRIIPs Regulation these products have specific features and objectives which present different challenges and information needs. This is also reflected in the differences between the content of the PRIIPs KID and the PEPP KID. Taking this into account, as well as the experiences since the implementation of the Regulation outlined earlier in this Section (sub-Section 3.6.1), in general the ESAs propose to retain these exemptions. A different disclosure framework is considered appropriate for these types of personal pension products. In this respect, the ESAs requested information from NCAs on the existing national product information documents used and based on the information collected it is understood that a summary product document does not exist in all Member States.

The ESAs are also of the view that the second approach is not justified since it is likely to raise other challenges regarding consistent treatment. In particular, there are considered to be some types of products which might be used to save for retirement that are substitutable with other individual savings products. The ESAs, therefore, consider that it is appropriate to seek to distinguish between the different types of pension products, although this presents definitional challenges.

Regarding the third approach, greater clarity and consistency of application would support the aims of the Regulation, as well as promote a level playing field. This could be done via the use of more specific criteria, such as regarding a minimum age for the policyholder to receive benefits. However, as indicated above, the development of additional criteria would need to be based on a thorough analysis of national pension products, which the ESAs have not been able to conduct at this stage. In this context, the use of other ESA convergence tools could also be considered in a next step.

At the same time, relating to point (e) of Article 2(2), the ESAs did assess specific feedback from the Call for Evidence regarding the fact that certain types of immediate annuities (i.e. products which pay a monthly income for a certain period of time based on an existing lump sum) are currently deemed to fall within the scope of the PRIIPs Regulation in certain Member States. Similar to other scope topics, different views were expressed by consumer associations (that these products should fall within the scope) and other stakeholders. The ESAs understand that such annuities only fall within the scope of the PRIIPs Regulation in a small number of Member States and in other Member States are deemed to be captured by point (e). Taking into account that these are retirement products without a saving or accumulation component, and in order to provide for a consistent treatment, the ESAs recommend that these products are explicitly excluded under Article 2(2).

Regarding any changes to points (e) and (g), it is important to take into account that the definition of IBIPs in IDD is currently aligned with the definition in the PRIIPs Regulation. Consequently, where an insurance product is subject to PRIIPs and is required to produce a KID, it is also subject to Chapter VI of the IDD on additional requirements in relation to insurance-based investment products, such as regarding the assessment of appropriateness and suitability. In particular, a judgement that PRIIPs should no longer be applied to certain types of pension products, because for example a more tailored disclosure regime is more appropriate, does not necessarily mean that the requirements in Chapter VI of IDD are no longer relevant.

3.6.4 Further precision on the application of the PRIIPs Regulation including to bonds

In 2019 the ESAs published a Supervisory Statement on the application of the scope of the PRIIPs Regulation to bonds (JC 2019 64⁹⁷). In the Statement it was stated that:

Uncertainty over the application of the PRIIPs Regulation to bonds, has led to negative consequences for the functioning of bond markets, and access to these markets by retail investors. It also risks divergent applications by NCAs with negative consequences for achieving uniform levels of retail investor protection and a level playing field amongst product manufacturers and distributors within the EU.

The Statement provided guidance on the practical application of the provisions determining the scope of the PRIIPs Regulation, in particular recitals 6 and 7 and Article 4(1), to different types of common bond features. NCAs were recommended to apply the guidance when supervising these requirements.

In the Call for Evidence the ESAs asked for views and experiences with this Statement. Amongst those that responded to this question, the vast majority expressed support for the Statement while also stating that there remains legal uncertainty on the application to bonds, taking into account that the Statement is a non-binding measure. Some respondents also argued that a number of additional features of bonds, in particular “make-whole” clauses, should not result in a bond being deemed a PRIIP.

In line with the Supervisory Statement, the ESAs recommend that changes are made to Chapter 1 of the PRIIPs Regulation to specify more precisely which types of bonds fall within the scope of the Regulation. This could be done by specifying relevant cases where types of bonds or bond features do not result in a product being deemed a PRIIP, such as types of fixed and variable rate bonds as described in the ESA Statement.

At the same time the ESAs’ assessment in the 2019 Supervisory Statement aimed to provide guidance regarding the existing PRIIPs Regulation. As part of this advice, the ESAs have also assessed if changes to the scope of the PRIIPs Regulation would be appropriate. In the 2019 Supervisory Statement the ESAs stated that the inclusion of a make whole clause may result in a bond falling into scope. However, taking into account that make whole clauses are a mechanism which allow the manufacturer to end the product early without this being at the detriment of the investor, the ESAs are of the view that this is not the type of structure that was intended to be captured by the PRIIPs Regulation. The ESAs therefore recommend that the review of the PRIIPs Regulation is used to specify that the inclusion of such clauses *per se* should not result in a bond falling into the scope of PRIIPs. In the Statement the ESAs defined such clauses as ‘the inclusion of a clause that allows the issuer to pay off the remaining debt early using a reference rate to determine the net present value of future coupon payments that will not be paid’. A relevant criterion was considered to be whether the mechanism to calculate the discount rate is known in advance to the retail investor. In the meantime, a similar definition of “make-whole clause” has been introduced into MiFID II⁹⁸ as follows:

“make-whole clause” means a clause that aims to protect the investor by ensuring that, in the event of early redemption of a bond, the issuer is required to pay to the investor holding the bond

⁹⁷ https://www.esma.europa.eu/sites/default/files/library/jc-2019-64_priips_kid_supervisory_statement_bonds.pdf

⁹⁸ Point 44a of Article 4(1) of MiFID II (introduced in Directive (EU) 2021/338).

an amount equal to the sum of the net present value of the remaining coupon payments expected until maturity and the principal amount of the bond to be redeemed;'

The ESAs consider that this definition could also be used to identify such clauses in the context of PRIIPs.

Furthermore the ESAs would like to reiterate the recommendation made in the Supervisory Statement regarding the provision on scope in the PRIIPs Regulation. In the Statement the ESAs said:

Ultimately, in order to fully address the risk of divergent applications by NCAs, the ESAs recommend that during the upcoming review of the PRIIPs Regulation, the co-legislators introduce amendments to the Regulation in order to specify more precisely which financial instruments fall within the scope of the Regulation. We would also recommend to reflect more expressly the stated intention of the PRIIPs Regulation⁹⁹ to address packaged or wrapped products rather than assets which are held directly, to avoid any legal uncertainty on this point.

One area of uncertainty concerns the application of the PRIIPs Regulation to non-financial services companies. Recital 6 of the PRIIPs Regulation indicates that it only applies to products manufactured by the financial services industry. Recital 7 also states that assets that are directly held should be excluded from the PRIIPs Regulation. This would suggest that the financing of non-financial activities, such as through corporate bonds, are not intended to be captured by the PRIIPs Regulation. However, this is not explicit in Chapter 1 of the PRIIPs Regulation and has led to uncertainty in the market and divergent applications. The ESAs consider that there can be a rationale to exclude non-financial services companies in line with the rationale set out in these recitals. At the same time, there might be a risk of regulatory arbitrage in doing so. The ESAs perspective on this issue is that both approaches can be justified and that the crucial aspect is to provide clarity on the treatment – this can entail an amendment either to recital 6 or to Chapter 1 of the PRIIPs Regulation in order to be clearer on the application of the PRIIPs Regulation to non-financial services companies.

Lastly, the recommendation in the ESA Supervisory Statement to specify more precisely which financial instruments fall within the scope of the PRIIPs Regulation is also considered to be relevant more generally, i.e. not only for bonds, in order to avoid divergent applications. This could be done by including a significantly longer non-exhaustive list of products that are in or out scope of the PRIIPs Regulation within Chapter 1. Within the time constraints of this call for advice, the ESAs are not in a position to propose such a list at this stage, but stand ready to contribute to further work on this topic.

3.6.5 When a PRIIP is made available to retail investors

(i) Introduction

The current PRIIPs Regulation provides for a dual set of obligations depending on the entity concerned. The first pertains to the product design phase (i.e. Article 5, which applies to the manufacturer of a PRIIP) while the other relates to the distribution phase (i.e. Article 13 and the requirement that the person advising on or selling a PRIIP provides the KID to the retail investor prior to the conclusion of a binding contract).

⁹⁹ This is stated in recitals 6 and 7.

Part of the complexity of the PRIIPs Regulation is that the PRIIP manufacturer's obligations in Article 5, which is to draw up and post the KID on its website, must take place before a PRIIP is 'made available to retail investors'. This concept of 'made available' is a notion introduced by the PRIIPs Regulation, with limited context or definition. This can raise questions as to how this concept relates to those used in other investor protection legislation, for instance, 'sold with or without advice' in MiFID II and IDD.

(ii) Feedback from the Call for Evidence

In the answers to the consultation numerous stakeholders called for a clarification of the concept of 'made available to retail investors'. They stressed that the concept could be interpreted and understood in different ways by stakeholders, which leads to a risk of inconsistent application of the rules in numerous cases.

For instance, it was argued that the concept could be understood as referring to a PRIIP which is:

- targeting retail investors (e.g. within the meaning of a "target market" under MiFID II and IDD);
- accessible to retail investors, either at their own initiative (e.g. a broker providing investment services that only consist of execution or reception and transmission of client orders following an investor's request) or at the initiative of the distributor;
- not targeting retail investors, but invested in by a limited number of retail investors (e.g. the portfolio manager of a private equity fund);
- tailor-made for one or a few high net worth individual(s) or on the contrary widely distributed;
- not targeting retail investors in the EU, but invested in by a few retail investors in the EU.

It has also been argued that a PRIIP offered to a single retail investor would not trigger the requirements of Article 5, due to the use of the plural form (i.e. 'made available to retail investors').

These possible differences of interpretation can have meaningful consequences, such as manufacturers unnecessarily producing (and regularly updating) a KID "just in case" (with the costs this involves), or, conversely, assessing that no KID needs producing based on the assumption that retail investors are not expected to invest in a product they designed for professional investors from the outset, but there being the risk that some retail investors still invest in this product and may not be provided with a KID.

Some stakeholders responding to the Call for Evidence proposed ways to clarify the concept of 'made available to retail investors'. Below are the most salient proposals put forward:

- An approach replicating the one developed by the UK Financial Conduct Authority in a consultation on the revision of the UK PRIIPs rules: a PRIIP should not be considered as 'made available to retail investors' where the following three cumulative criteria are met: (i) the marketing materials exclude retail investors; (ii) the marketing and distribution strategy

targets professional investors only and (iii) the minimum denomination is £100,000 or above¹⁰⁰.

- An approach inspired from the Prospectus Regulation, whereby a PRIIP should not be deemed to be ‘made available to retail investors’ where (i) its denomination per unit is above €100.000, or (ii) it can only be acquired for a minimum investment of €100.000, or (ii) where it is offered to fewer than 150 natural or legal persons per Member State, other than professional investors.
- Specifically concerning structured products and closed-ended funds: a PRIIP should not be considered as ‘made available to retail investors’ when it is not actively marketed to retail investors. This would imply for instance that when the subscription period of such a product has closed, drafting and updating a KID is not required any more.
- Finally, a proposal was to align PRIIPs with the current Insurance Distribution Directive (IDD) by replacing the concept of ‘made available to retail investors’ by that of ‘products sold with or without advice to retail investors/policyholders’.

There was no clear consensus amongst stakeholders on a possible way forward to clarify the concept in all cases.

(iii) ESA Analysis

Based on the views expressed by stakeholders during the Call for Evidence, the ESAs recommend that the Commission clarifies Article 5 and the requirements applicable to PRIIP manufacturers taking into account the considerations set out below.

1) Clarification of the circumstances under which a PRIIP manufacturer is required to draw up and publish a KID on its website

The changes should aim to lay down a general requirement that should apply in principle in all circumstances. At the same time, the rules should also better take into account specific situations highlighted by stakeholders, such as the treatment of the carried interest/co-investment as well as closed-end funds.

At a minimum, it would be useful to have alignment between the concepts in Article 5 of the PRIIPs Regulation and the concept used in Article 13 of a ‘person advising on, or selling, a PRIIP’. A possible amendment could therefore be along the lines of:

The manufacturer of a PRIIP shall draw up a key information document for that product in accordance with the requirements of this Regulation, and shall publish the document on its website, before any person can advise on, or sell, such a product to retail investors in the EU.

¹⁰⁰ Respondents to the ESA Call for Evidence referred to the proposals in the following consultation paper: [CP21/23: PRIIPs - Proposed scope rules and amendments to Regulatory Technical Standards | FCA](#). On 25 March 2022, the FCA published their final rules in the following policy statement: [PS22/2: PRIIPs - Final scope rules and amendments to Regulatory Technical Standards | FCA](#). The policy statement includes the proposals consulted on regarding the concept of ‘made available’.

Further, preferably, Articles 5 and 13 of the PRIIPs Regulations could be amended to reference the concepts developed in distribution-specific legislation, and therefore facilitate cross sectorial interpretation.

For illustration purposes, on the basis of the IDD concept in Article 25 of products being ‘marketed or distributed’, and the MiFID II concept in Article 24 that distributors ‘offer or recommend’ financial instruments, Article 5 of the PRIIPs Regulation could be reworded as follows:

The manufacturer of a PRIIP shall draw up a key information document for that product in accordance with the requirements of this Regulation, and shall publish the document on its website, before any person can market, distribute, offer or recommend such a product to retail investors in the EU.

2) Clarification of the responsibilities between PRIIP manufacturer and distributor

It could be made clear where the PRIIP manufacturer designs a PRIIP in such a way that its target market excludes retail investors or that its legal documentation (prospectus, rules or instruments of incorporation) makes it clear that the PRIIP is solely addressed to professional investors, that no KID is required. Conversely only when the PRIIP manufacturer designs a PRIIP that targets retail investors should they draw up a KID.

The distributor, for its part, should be responsible for following the product specifications designed by the PRIIP manufacturer regarding the target market of the PRIIP. In addition, irrespective of whether or not a KID has been prepared by the PRIIP manufacturer, the obligation to provide a KID would remain applicable to any person advising on, or selling, a PRIIP prior to entering into a binding contract with the retail investor. The ESAs understand that, following point 18 of the Commission Guidelines on PRIIPs, the obligation to provide the KID to retail investors applies to all types of “selling” or “distribution”, including at the initiative of the retail investor. Where a distributor does not have a KID for a product that a retail investor intends to invest in, the distributor would need to acquire a KID (e.g. from the PRIIP manufacturer), or otherwise it would be a breach of the PRIIPs Regulation to proceed with the sale. Nevertheless, it would be relevant to analyse further the interaction with other EU legislation concerning distribution¹⁰¹, such as IDD and MiFID II¹⁰².

It should also be clearer that the obligation to provide a KID should only apply to professional¹⁰³ advisers, or sellers, of a PRIIP. As a consequence, in specific circumstances, a retail investor selling a PRIIP before maturity should not trigger the obligation for that retail investor to provide a KID to the buyer.

¹⁰¹ This would be in line with the aims of the Retail Investment Strategy in terms of ensuring the coherence of the set of rules for retail investment.

¹⁰² For example, Article 42 of MiFID II, provides for certain exemptions for distributors providing services ‘at the exclusive initiative of the client’.

¹⁰³ For example, authorised under MiFID II or registered under IDD.

3) Reflection on the goal of the PRIIPs Regulation and its interactions with MIFID II and IDD and other EU rules in the financial sector

The ESAs are aware of diverging views on the objective of the PRIIPs Regulation. Most stakeholders understand the framework as aiming to provide greater product transparency to retail investors in a pre-contractual context, with IDD and MiFID II covering the product distribution requirements. However, others understand the PRIIPs Regulation as an overarching marketing framework, potentially with an extra-territorial reach since the obligations are not currently worded in a manner to limit the scope to retail investors or manufacturers or persons advising on or selling a PRIIP in the EU. The Commission guidelines on PRIIPs (point 10 on Territorial application) support this latter view. This can raise some challenges regarding the enforcement of the obligations in the PRIIPs Regulation, although measures can be taken towards EU distributors.

Also, the ESAs would recommend that concepts used across related sets of rules and regulations, such as PRIIPs, MiFID II, IDD, UCITS, AIFMD¹⁰⁴, CBDF¹⁰⁵, and SFDR be harmonized to enhance legibility and comprehensibility of the overall framework, which is key to a well-functioning CMU.

Advice on scope

The ESAs do not recommend at this stage, at least until a more differentiated approach between products is possible under the PRIIPs Regulation, to extend the scope of the PRIIPs Regulation to additional financial products.

The ESAs recommend to maintain the exemption in Article 2(2), point (d) but to align it with the Prospectus Regulation.

The ESAs recommend to maintain the exemptions in Article 2(2), points (e) and (g) at this stage. Nevertheless, the ESAs invite the Commission to consider if point (e) could be further specified to promote consistent application and, in particular, the ESAs recommend to explicitly exempt immediate annuities (which do not have an accumulation phase) from the scope of the PRIIPs Regulation.

The ESAs recommend that changes are made to Chapter 1 of the PRIIPs Regulation to specify more precisely which types of bonds fall within the scope of the PRIIPs Regulation. The guidance in the ESAs' Supervisory Statement of 2019 is considered an appropriate basis for such specifications. However, it is additionally recommended to specify that "make-whole" clauses should not *per se* result in a bond falling into the scope of PRIIPs.

The ESAs recommend to clarify the application of the scope to non-financial services companies.

The ESAs recommend the development and inclusion in the PRIIPs Regulation of a significantly longer non-exhaustive list of products that are in or out of scope. Within the time constraints of this call for advice, the ESAs are not in a position to propose such a list at this stage, but stand ready to

¹⁰⁴ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, (OJ L 174, 1.7.2011, p. 1).

¹⁰⁵ Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings, (OJ L 188, 12.7.2019, p. 106).

contribute to further work on this topic, in the next steps of any review process of the PRIIPs Regulation.

The ESAs recommend that provisions are introduced to clarify or further specify the 'made available' concept in Article 5, regarding the circumstances under which a PRIIP manufacturer is required to draw up and publish a KID on its website, and to distinguish the responsibilities between the product manufacturer and distributor.

3.7 Approaches to take into account different types of PRIIPs

3.7.1 Introduction

The current PRIIPs Regulation highlights that two of the principal aims of the Regulation are to help retail investors to compare different products and to understand their features.¹⁰⁶ The PRIIPs Regulation further provides that the KID should be drawn up in a standardised format in order to allow for this comparison.

The ESAs support these aims. However, the supervisory experience during the development of the RTS, as well as following the implementation of the PRIIPs Regulation, have shown challenges to achieve both these aims simultaneously in the context of the broad scope of the Regulation. The ESAs are of the view that it is important to recognise that there can be some tension or a trade-off between these two aims. For example, the optimal approach for presenting information for a long-term savings product can be different to a short term leveraged product. Applying the same approach to a wide range of different products does not necessarily result in a level-playing field where there are fundamental differences between these products. Further, the comprehensibility of the information for retail investors, is, in some cases, not facilitated by taking a uniform approach.

The ESAs articulated a similar position in February 2019, prior to further work on a review of the PRIIPs Delegated Regulation¹⁰⁷:

- *Differentiation between different types of PRIIPs: taking into account information regarding challenges to apply the KID to specific product types, for example very short-term products or specific types of insurance or pension products, it is intended to analyse if it is appropriate to introduce some additional differentiation in how the rules apply to different types of products, while still adhering to the overarching aim of comparability between substitutable products.*

Different approaches are already possible within the current Level 1 framework, for example it was recognised that for certain types of derivatives a different type of presentation of performance scenarios was justified (Article 3(5) of the PRIIPs Delegated Regulation). This aspect was also further considered during this review of the PRIIPs Delegated Regulation initiated in 2019 and some additional differentiation was introduced; for example the use of a different cost indicator for the information on the breakdown or composition of costs¹⁰⁸ between IBIPs and PRIPs), and the different approaches to show performance and costs for products with a recommended holding period of less than one year, and for products that may be called or cancelled automatically before their maturity date. However, in other cases affecting broader groups of products or core indicators within the KID, the ESAs were not able to propose approaches that they considered to be optimal in terms of facilitating retail investor understanding and decision-making within the constraints of the existing PRIIPs Regulation.

3.7.2 More tailored KID

¹⁰⁶ For example in recital 1, 'Existing disclosures to retail investors for such PRIIPs are uncoordinated and often do not help retail investors to compare different products, or understand their features'.

¹⁰⁷ This Final report followed a targeted consultation on PRIIPs towards the end of 2018 (JC 2019 6.2)

¹⁰⁸ For the cost indicator to show total costs, a consistent approach is taken.

The ESAs are of the view that the objectives of the KID would be better achieved if it would be possible, where necessary, for certain parts of the document to be more tailored to the type of product. The details of how this differentiation would be applied to each element of the KID, and for which types of products, is considered more relevant to be addressed within the PRIIPs Delegated Regulation. However, it is intended to mean that:

- Where possible the same approach would be taken for all types of PRIIPs. This might include, for example, the sections on purpose, product, comprehension alert, type, information on the risk¹⁰⁹, what happens if the PRIIP manufacturer is unable to pay out, and how the retail investor can complain.
- Where it can otherwise undermine the comprehensibility and meaningfulness of the information, substantially different approaches could be taken between different product types while still aiming for direct comparability between products that are substitutable¹¹⁰. This is considered to be the case in particular for the information on performance (see further Section 3.8), and, as mentioned above, some differentiation has already been considered appropriate regarding the information on costs.
- The differentiation would be applied by considering appropriate groups or subsets of products to be defined in the PRIIPs Delegated Regulation.¹¹¹ Subject to any changes made to the scope of the PRIIPs Regulation, such a grouping could be along the following lines:
 1. Long-term savings (or retirement) products (e.g. identified by reference to the recommended holding period or contractual holding period)
 2. Very short-term products (e.g. identified by reference to the maturity date)
 3. Products with material insurance benefits (e.g. based on a minimum threshold of insurance coverage)
 4. Linear (non-structured) products including investment funds and certificates
 5. Structured products
 6. Derivatives

The appropriate application of this grouping to specific elements of the KID would depend on the specific issue. It would not necessarily mean that each grouping applies a different approach in each case – certain approaches might be appropriate for several groups. It is recognised that it would be important to aim for a clear borderline between different groupings to prevent the risk of any gaming or regulatory arbitrage. At the same time, this inherent regulatory risk is considered to be offset by the advantages that should result for the majority of products from a more tailored approach. It would also entail different rather than no or lesser requirements being applied.

¹⁰⁹ For example, points (i), (ii), (iv) and (v) of Article 8(3)(d) of the PRIIPs Regulation.

¹¹⁰ Following the example given in the introduction of this section, not all of the products currently within the scope of the Regulation are considered to be substitutable.

¹¹¹ This is currently the case in terms of the different approaches described in the previous section.

In order for this approach to be developed at Level 2, the ESAs would recommend the following types of changes to the PRIIPs Regulation:

- A statement, for example in the recitals, that there can be a trade-off between comparability and comprehensibility of the information and that the first objective should be comprehensibility. Furthermore, that the Regulation aims for comparability between substitutable products.
- Adjustments to the empowerment in Article 8(5). Currently this empowerment refers to the need to take into account the various types of PRIIPs. However, this can be interpreted as meaning that these different products should be taken into account when aiming to define a consistent approach for all of these products. The ESAs, therefore, recommend that it is stated that where appropriate in order to provide fair, clear and not misleading information to retail investors, different approaches can be taken between different types (i.e. groups, or categories) of products.

3.7.3 How to address challenges relating to specific product types or market developments

The use of a highly standardised template should help retail investors to compare between products as well as become familiar with the template for the KID.

However, the implementation of the KID has demonstrated the challenges to design such a template for a broad range of products types. In particular, a number of cases have arisen where it is clear that the prescribed approaches are not compatible with specific product types or features.¹¹² There have also been challenges in this context due to uncertainty as to exactly which products fall within the scope of the PRIIPs Regulation¹¹³. Where possible, the ESAs sought to address these issues in Level 3 guidance, such as Q&A, but it is understood that there remained some legal uncertainty amongst market participants. The ESAs also subsequently addressed issues via an amending RTS. However, given the procedural steps relating to the RTS, this does not usually present an immediate solution.

One approach to address this type of issue, which is possible based on the existing PRIIPs Regulation, is to provide some discretion to PRIIP manufacturers to make adjustments to the strict application of certain requirements, provided this is duly justified and documented. The ESAs introduced this approach when proposing amendments to the PRIIPs Delegated Regulation (to be introduced in January 2023) to allow the SRI to be increased and performance scenarios to be lowered if deemed necessary by the PRIIP manufacturer. This is intended to avoid the risk of retail investors being provided with misleading information. However, a drawback is that it can result in inconsistent approaches by PRIIP manufacturers and the ESAs consider that such an approach, as the one introduced by ESAs in the PRIIPs Delegated Regulation, should only be used in specified cases rather than providing general discretion to PRIIP manufacturers to adjust the KID template.

¹¹² See examples in the Introduction to this section, as well as Q&A on narratives for derivatives.

¹¹³ For example case of certain bonds falling into scope which was not anticipated.

An alternative approach discussed by the ESAs during the work on this advice was to introduce a mechanism which would allow supervisory authorities to authorise a certain part of, or certain information within, the KID to be adjusted, if the inclusion of information according to the prescribed template or methodologies would risk being misleading, or otherwise risk causing material detriment, to retail investors. This could potentially allow supervisors to react to unforeseen issues or potential new product developments more quickly than via an amendment to the PRIIPs Delegated Regulation. It was discussed whether such an authorisation would be on an ad hoc basis or connected to an *ex ante* notification process, and whether it could be applicable for a category of product or product feature (rather than an individual product) and therefore likely to be relevant for more than one PRIIP manufacturer. Under such a mechanism, it would therefore have been important that any authorisations given are published. Such mechanisms currently exist in EU Regulation, for example Article 18 of the Prospectus Regulation allows competent authorities of the home Member State to authorise an omission of information from the Prospectus¹¹⁴. However, on balance, the ESAs judged that the advantages of this approach are outweighed by a number of material drawbacks, also taking into account that it is not clear how many issues will arise in the future¹¹⁵. This includes the resource implications for supervisory authorities in view of the potential for a high number of requests by PRIIP manufacturers. In addition, even if it could, for example, be required for NCAs to inform and potentially seek the opinion of the ESAs, there is considered to be a risk of non-convergent approaches at EU level. As a consequence, ESAs do not recommend such an approach.

Advice on approaches to take into account different types of products

The ESAs recommend the following types of changes to the PRIIPs Regulation:

- To include a statement, for example in the recitals, that there can be a trade-off between comparability and comprehensibility of the information and that the first objective should be comprehensibility. Furthermore, that the Regulation aims for comparability between substitutable products.
- Adjustments to the empowerment in Article 8(5) to state that where appropriate in order to provide fair, clear and not misleading information to retail investors, different approaches can be taken between different types of products.

¹¹⁴ It is recognised that there are differences between the PRIIPs and Prospectuses regimes, in particular that the Prospectus needs to be formally approved by the NCA before publication and therefore that an additional process as such is not needed for the authorisation to omit information.

¹¹⁵ The issues that have arisen to date can be seen as part of the implementation phase of the KID and it seems that such issues would arise less frequently over time.

3.8 Performance scenarios and past performance

3.8.1 Feedback from the Call for Evidence

Regarding the performance section of the KID, and past performance related issues, the views provided from the Call for Evidence are summarised below.

In relation to performance scenarios:

- A clear majority of stakeholders falling in the category of asset managers or investment advisors, as well as a prominent consumer association called for changes to Article 8(3)(d)(iii)¹¹⁶ of the PRIIPs Regulation, e.g. by replacing the words ‘appropriate performance scenarios’ with ‘information on performance’. In their view, such a proposal would allow PRIIP manufacturers to provide, in the PRIIPs Delegated Regulation, more adequate information to retail investors. These views were echoed by certain representatives from the insurance sector.
- With respect to future performance scenarios, and in particular forward-looking performance scenarios, several stakeholders indicated that in general these are too complex for retail investors and could create a misunderstanding on performance expectations¹¹⁷, even amongst those generally in favour of forward-looking information. They suggested different possible improvements (e.g. changes to growth rates, introducing some explanations on the dependencies toward the underlying assets and its impact on returns, changing the presentation of the information in the form of graphs or adding notes on market scenarios underlying the scenarios).
- However, stakeholders from the structured products industry generally indicated their preference to keep the current (in the PRIIPs Delegated Regulation) or a similar methodology for performance scenarios, for structured products, because they consider these forward-looking scenarios provide adequate information for retail investors (although a few respondents favoured “what if” scenarios). Even amongst those respondents which supported probabilistic future performance scenarios, many recommended some flexibility in order to remove intermediate scenarios when these scenarios are not relevant (e.g. for closed-ended products or long term products).

With respect to past performance, many respondents favoured changing the wording of 8(3)(d)(iii) to “information on performance” because they see this change as a pre-requisite to including past performance in the KID itself (as opposed to in a separate document), in particular for linear PRIIPs and linear investment options. Past performance is considered by these stakeholders as providing comparable and objective information in relation to the extent to which an investment product is able

¹¹⁶ ‘appropriate performance scenarios, and the assumptions made to produce them’

¹¹⁷ The ESMA SMSG (Securities and Markets Stakeholder Group) indicated that for linear investment funds in particular ‘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’.

to meet its objectives. Most of these respondents favoured replacing the existing performance methodologies based on past performance, included in the revised PRIIPs Delegated Regulation (Commission Delegated Regulation (EU) 2021/2268 due to be implemented on 1 January 2023), with actual past performance, and refer to the disclosure standards for UCITS in the fund's KIID as a desirable outcome. In particular, the comparison with an appropriate benchmark, as is the case for the KIID, is considered as critically useful information.

3.8.2 Assessment of the ESAs on performance

(i) Differentiation between the different types of PRIIPs

As mentioned in Section 3.7, the ESAs are of the view that the performance section of the KID is an area, and perhaps the most pressing area, where a more differentiated approach between different types of products is needed.

The intended outcome of this differentiation (please see the sub-sections below) is that the nature of the performance information would be specified in the PRIIPs Delegated Regulation and that it would be possible to include forward-looking projections only for certain types of products, such as for some or all insurance products and for structured products, where this is still considered to be meaningful information. For other products, other types of information on performance, which would not be based on forward-looking performance scenarios based on modelling, together with showing past performance, is seen as more appropriate.

As mentioned in Section 2, all the below proposed amendments should, however, be subject to further consumer testing by the Commission.

(ii) Performance information for non-structured investment funds and other linear products

In the ESA Final Report on draft RTS to amend the PRIIPs KID¹¹⁸, the ESAs indicated their views on the extent to which forward-looking performance scenarios could be appropriate for non-structured investment funds and other linear products.

In this context, the ESAs tested on a large sample of investment funds various potential forward-looking methodologies for performance scenarios, and given none of these options performed well, the outcome of that testing exercise was as follows:

for investment funds (UCITS and AIFs, except structured UCITS and structured AIFs) and other Category 2 PRIIPs, such as unit-linked insurance-based investment products, the ESAs propose a new methodology with the following main elements: - To not use a “model” and instead present performance scenarios (unfavourable, moderate, favourable) showing a range of future outcomes that are a more direct estimate from a distribution of past returns of the PRIIP (or a relevant benchmark)

¹¹⁸https://www.esma.europa.eu/sites/default/files/library/jc_2020_66_final_report_on_draft_rts_to_amend_the_priips_kid.pdf (from page 12)

The ESAs are of the view that since this extensive testing exercise has been conducted¹¹⁹, there has not been further evidence to indicate that forward-looking performance scenarios based on modelling would be appropriate for non-structured investment funds.

In the context of the abovementioned work on the RTS, for non-structured investment funds and other Category 2 PRIIPs, the ESAs put forward a methodology, showing a range of future outcomes that are a more direct estimate from a distribution of past returns of the PRIIP, that could meet the requirements of Article 8(3)(d)(iii) of the PRIIPs Regulation, while avoiding the drawbacks of forward-looking performance scenarios based on modelling.

However, in the context of the present advice on the review of the PRIIPs Regulation, given also the views expressed by the ESAs on past performance (please see the next sub-section), the ESAs are of the view that a different approach could be envisaged. For example, during the review of the PRIIPs Delegated Regulation, the ESAs would have preferred a different presentation of the performance scenarios for these products, which the ESAs thought would be better understood by retail investors. However, given that this deviated materially from the approach used for other types of PRIIPs, it was not considered to be in line with the current PRIIPs Regulation. Furthermore, it would be relevant to assess further the extent to which scenarios that are a direct estimate from the distribution of past returns of the PRIIP complement the information on past performance, or whether a simpler or different presentation would better complement the past performance information.

Consequently, the ESAs would recommend replacing the requirement in Article 8(3)(d)(iii) for ‘appropriate performance scenarios’ to be shown for all products with the wording ‘appropriate information on performance’.

This would allow more flexibility on the nature of the information provided in the performance section of the KID given, as mentioned above, for certain products such as non-structured investment funds, forward-looking performance scenarios may not be the most appropriate, clear, reliable and meaningful information on performance for the retail investor¹²⁰.

Secondly, the PRIIPs Delegated Regulation would subsequently detail the contents and nature of this appropriate information on performance for the different types of PRIIPs (please also see the following sub-section). It is to be noted that the ESAs are, subject to the results of consumer testing, not of the view that this information on performance should be, for any PRIIP, solely constituted by the past performance information referred to in the sub section below. In particular, for non-structured investment funds and other linear products, this information on performance is expected to be composed of:

- a) Information related to how the product might perform in the future:
 - This could be narrative based performance information indicating the factors upon which performance depends (see below);

¹¹⁹ This also takes into account work to assess and develop proposals for determining forward-looking performance scenario models appropriate for investments funds since 2014, when the ESAs started to develop the performance section of the KID. All of the proposals assessed had significant challenges or drawbacks.

¹²⁰ These criteria are seen as more relevant, and also more important for the retail investor, as compared to, for example the consistency of the mathematical link between the methodologies used for the calculation of the SRI and the performance scenarios.

- For IBIPs in particular, this could also be some type of performance figures or illustrations that were considered to complement the information on past performance.

b) Past performance (as referred to below).

Regarding specifically unit-linked IBIPs that are Category 2 PRIIPs, subject to further analysis in the context of the development of any future Delegated Regulation, it might still be relevant to include forward looking performance projections in some or all cases. Such projections can be relevant, in particular, for longer-term products (see sub-section (iv) to this section below), or in order to provide a common approach between different types of IBIPs.

(iii) Example of ‘appropriate information on performance’: Narrative-based information regarding performance drivers

One option that could be applied, at least for certain types of products, such as non-structured investment funds, is that the PRIIPs Delegated Regulation could specify, for example, that the performance section would include narrative based performance information indicating the factors upon which performance depends. These performance drivers would detail the primary factors likely to affect future performance and could include the most relevant index, benchmark, target, or proxy, as applicable, along with an explanation of how the PRIIP is likely to compare in terms of performance and volatility, sensitivity to changes in interest rates etc. In certain cases, where relevant, these might also include hypothetical (“what if”) information. For this approach it would be important to evaluate how to ensure that the information is not too generic or standardised, that it does not replicate the product description, that it does not confuse or overload retail investors, and thus overall whether it is added value to retail investors. This could be assessed in the context of future consumer testing.¹²¹

This type of performance information section might be appropriate at least for certain types of PRIIPs to provide retail investors with relevant information to support their future financial planning, which may not always be achieved by providing solely information on past performance (for non-structured investment funds and other linear products).

It could also be considered to apply this approach for all types of PRIIPs in order to provide a common base or reference point regarding performance information regardless of the product type.

(iv) Performance information for non-linear insurance-based investment products, structured products, structured investment funds and other non-linear PRIIPs

For other types of PRIIPs where there is a non-linear relationship between the underlying assets and the pay-out to the retail investor there are still significant challenges to design performance scenarios that are fair, clear and not misleading for different types of products and in different market circumstances. However, for these types of products, they can be useful in order to display the nature and structure of the pay-out. They are also very relevant for longer-term products, in particular products used for retirement purposes, to help the retail investor understand what type of investment

¹²¹ It can be noted that during the review of the PRIIPs Delegated Regulation, the ESAs decided not to include “illustrative” scenarios together with performance scenarios taking into account findings from a consumer testing exercise that the inclusion of this information did not have a material impact on the outcomes tested, (see pages 34-35 of February 2021 Final Report).

sum might be feasible to accumulate over a longer time period, as well as the level of risk that the retail investor might be prepared to take in order to reach their investment goals.

In terms of the methodology to be used, in the context of the ESA Final report on draft RTS to amend the PRIIPs KID¹²², the ESAs indicated their views on the extent to which forward-looking performance scenarios could be appropriate for non-linear products, such as structured products and structured investment funds:

In relation to other PRIIPs¹²³, the ESAs propose to keep the existing approach¹²⁴, including the stress scenario, but to introduce a specific adjustment to reduce the risk that retail investors are provided with inappropriate expectations about the possible returns they may receive

If it were no longer required to present performance scenarios in the PRIIPs Regulation, based on the previous analysis conducted, the ESAs are still of the view that for these products, forward-looking performance scenarios based on modelling, such as those included in the current PRIIPs Delegated Regulation, might be the most relevant information for these products. The above mentioned amendment of the Article 8(3)(d)(iii) of the PRIIPs Regulation would allow for the use of such forward-looking performance scenarios based on modelling for certain products, because the PRIIPs Delegated Regulation could specify that for those products appropriate information on performance is precisely these forward-looking performance scenarios based on modelling.

At the same time, the possibility to differentiate between different groups of products, is also important in this context. Long term saving products, for instance, are not considered to be substitutable with short term structured notes or securities. For the PEPP KID designed specifically for pension products, it is also required to use a stochastic model for performance scenarios, but the specific requirements are different to the PRIIPs methodology.

It is to be noticed (please also see the next sub-section on past performance) that these products would not show past performance (which is not seen as relevant for these products). The performance section for these types of PRIIPs could, therefore, be constituted by the sole table of performance scenarios, as is currently the case. It could also be complemented with narrative-based information, if deemed appropriate as set out above.

3.8.3 Assessment of the ESAs on past performance

In the ESAs Final Report on draft RTS to amend the PRIIPs KID¹²⁵, the ESAs indicated their views on the extent to which past performance information is appropriate for non-structured investment funds and other linear products:

...based on these findings of the consumer testing as well as taking into account the feedback from respondents to the public consultation, the ESAs continue to be of the view that past

¹²²https://www.esma.europa.eu/sites/default/files/library/jc_2020_66_final_report_on_draft_rts_to_amend_the_priips_kid.pdf (from page 12)

¹²³ Other than non-structured investment funds and other linear products

¹²⁴ i.e. the currently used forward-looking performance scenario based on modelling

¹²⁵https://www.esma.europa.eu/sites/default/files/library/jc_2020_66_final_report_on_draft_rts_to_amend_the_priips_kid.pdf (from page 35)

performance is key information for retail investors and consequently that the best approach is to include this information in the KID.

This is because it can illustrate the actual behaviour of a product in given market circumstances and help retail investors to appreciate the volatility of the returns of the product, as well as indicate the ability of the investment manager.

At the same time, the ESAs recognise the need for the RTS to be compatible with the Level 1 framework. In this context, it has been argued that the intention of the co-legislators was for performance scenarios to be shown instead of past performance, and consequently that the proposals in the consultation paper were not in line with the PRIIPs Regulation. The ESAs have therefore considered how they could best support their regulatory objectives in this area without risking that the RTS would be deemed as exceeding its legal mandate. Linked to this, the ESAs have also considered the relevance of recommendations to the co-legislators to amend the current PRIIPs Regulation. Besides the significance of past performance information for retail investors, the current rules on the disclosure of past performance support several additional important regulatory objectives. Firstly, past performance should be disclosed in a standardised manner based on defined rules. In the absence of such rules, product manufacturers could potentially disclose past performance in a way that could be misleading or limit the comparability of the information. Secondly, these rules are also key in relation to the work of ESMA on closet indexing. This is a priority investor protection issue and significant resources have been committed to combatting such practices

(...)

ESAs would still recommend, as a preferred approach, to include past performance information within the main contents of the KID. It is understood that this would require a targeted amendment to Article 8 of the PRIIPs Regulation. This recommendation is on the basis that it is key information to inform retail investors about the risk-reward profile of certain types of PRIIPs. In view of this, it is not considered to be preferable that retail investors would need to refer to a separate document in order to locate this information¹²⁶. There are also considered to be some additional administrative burdens for PRIIP manufacturers to disclose this information separately”

The ESAs did not receive new evidence on this issue from the Call for Evidence and still hold the views set out in that Final Report. The abovementioned amendment of Article 8(3)(d)(iii) of the PRIIPs Regulation, that would remove the word ‘scenarios’, is precisely the targeted amendment referred to by the ESAs in the abovementioned Final Report, which would allow past performance to be shown in the KIDs of non-structured investment funds and other linear products.

¹²⁶ As is the case in the revised PRIIPs Delegated Regulation due to be implemented on 1 January 2023.

The ESAs are of the view that the scope and approach to presentation of past performance should also follow the approach suggested in the Final Report on the draft RTS to amend the PRIIPs KID¹²⁷.

Finally, the ESAs are of the view that the inclusion of past performance in the KID might require a marginal extension of the three page limit of the KID¹²⁸ assuming the other elements of the KID would be retained, but this would also depend on the size of the future amended performance section of the KID (please see above), for these products showing past performance.

Advice on performance scenarios and past performance

The ESAs recommend replacing the current requirement in the PRIIPs Regulation for ‘appropriate performance scenarios’ to be shown for all products (Article 8(3)(d)(iii)) with the wording ‘appropriate information on performance’ to allow more flexibility on the nature of the information provided in the performance section of the KID.

Following the views presented in the ESA Final Report on draft RTS to amend the PRIIPs KID, the ESAs are still of the view that past performance should be included in the KID for relevant PRIIPs, for example investment funds (UCITS and AIFs, except structured UCITS and structured AIFs). This would be possible based on the amendment proposed above to remove the word ‘scenarios’ from Article 8(3)(d)(iii) of the PRIIPs Regulation.

¹²⁷https://www.esma.europa.eu/sites/default/files/library/jc_2020_66_final_report_on_draft_rts_to_amend_the_priips_kid.pdf (from page 37)

¹²⁸ If it were possible to present the KID in a layered format, this issue would need to be revisited. However, the paper version of the KID would still exist (with the corresponding three page limit), and the digital version of the KID would surely also include limitations in terms of size and quantities of information provided, because the KID would need to remain a concise document.

3.9 PRIIPs offering a range of options for investment (Multi-Option Products (“MOPs”))

3.9.1 Introduction

In the ESA Consultation Paper of October 2019 on proposed amendments to the PRIIPs KID (JC 2019 63), the ESAs stated that their analysis of the implementation of the rules for MOPs indicated some significant challenges regarding the clarity and usefulness of the information provided to retail investors. In particular, it was stated that (page 51):

The main issues are considered to be following:

- *Where a generic KID is used (in accordance with Article 10(b) of the PRIIPs Delegated Regulation) it is difficult for the investor to identify the total costs related to a particular investment option. This arises because the generic KID shows a range of costs, but does not always identify which costs are specific to an investment option and which costs relate to the insurance contract. At the same time, it is understood that the information on the underlying investment option (in accordance with Article 14 of the PRIIPs Delegated Regulation), does not usually include the total costs of investing in that option. Therefore, it is often not possible for the investor to identify from the generic KID the costs that may apply in addition to those shown in the option-specific information.*
- *The current rules focus on the perspective of a selection between different investment options. In practice, many MOPs allow investors to allocate their premiums between different underlying investment options at the same time, for example in order to find the assets allocation that best meets their risks and investment objectives. Information on the combination of options is not explicitly required by the PRIIPs Delegated Regulation and is often not provided within the KID documentation.*

Following the consultation paper, the ESAs’ final proposals included some specific changes to the approach for MOPs, for example to require the separate disclosure in certain cases of the costs of the insurance contract or “wrapper” (i.e. the costs of the PRIIP other than the costs for the underlying investment options). It was considered that these changes would result in material improvements to the current KID regarding the first issue described above regarding the identification of the costs of the MOP.

Despite these proposed changes, there are still considered to be material issues that were not possible to address within the constraints of the review of the PRIIPs Delegated Regulation. In particular, in the Final Report (JC 2020 66), the ESAs stated that they consider the optimal way to address the challenges for MOPs is to use digital solutions, but that this would require changes to the PRIIPs Regulation.

The ESAs have identified the following areas where it is considered relevant to make improvements, notwithstanding the amendments in the revised PRIIPs Delegated Regulation (Commission Delegated Regulation (EU) 2021/2268):

- Bring further transparency on the costs of the insurance contract;

- More clearly demonstrate the impact of the costs of the insurance contract, such as on the performance of the product;
- Better facilitate comparison between investment options by retail investors within a MOP and between different MOPs;
- Better reflect how different investment options can be combined within a MOP.

In the Call for Evidence, the ESAs asked for feedback regarding potential alternative approaches for MOPs that might require a change of the PRIIPs Regulation. This feedback can be summarised as follows:

- The majority of stakeholders representing insurance providers, as well as some respondents from the asset management and banking sectors, argued in favour of maintaining the existing approaches allowing the PRIIP manufacturer to choose between preparing a KID per investment option (10a of the PRIIPs Delegated Regulation), and preparing a generic KID and a specific information document for each investment option (10b of the PRIIPs Delegated Regulation). In particular, the challenges of preparing a KID per investment option for products with a high number of investment options were underlined.
- These stakeholders also generally highlighted challenges to make a split between the costs of the insurance contract and the costs specific to the underlying investment options. On the other hand, the consumer associations that responded stressed the need for separate disclosure of these costs.

As part of this analysis, the ESAs considered the overall outcome or approach that can be most appropriate for MOPs, including details that are currently addressed in the PRIIPs Delegated Regulation and are considered more appropriate to be addressed at that level. This analysis has been relevant in order to consider the type of changes that are needed to the PRIIPs Regulation in order to achieve the overall outcomes proposed.

The ESAs have also taken into account the substantial differences between different national markets, which includes:

- Significant differences in the number of investment options, with a very high number of options regularly offered in various Member States (e.g. 50 or more), including some of the largest markets, while in various other Member States a more limited number of investment options is offered (e.g. around 10).
- Significant differences in the design of the products, such as between:
 - Products where the retail investor is not steered towards any specific allocation and chooses the options as they sees fit (“open architecture”);
 - Products with different degrees of steering regarding the allocation between investment options, for instance via standardised allocations, pre-determined risk profiles, or other features such as automatic switching mechanisms;

- Hybrid products that exist in some but not all markets, allowing the retail investor to combine a profit participation element¹²⁹ with a unit-linked element. It is possible for the allocation between these elements to be both fixed (static) or to be variable (dynamic).

Following the analysis conducted, the ESAs recommend some changes to the PRIIPs Regulation and these are set out below. The ESAs have also identified some areas where changes to the approach for MOPs could be introduced or further guidance could be given without the need for amendments to the PRIIPs Regulation. The ESAs will reflect further on any follow up steps regarding these issues. In doing so, the ESAs will take into account, in particular, the ongoing implementation of Commission Delegated Regulation (EU) 2021/2268, as well as the possibility to conduct consumer testing.

3.9.2 Use of cost ranges in the generic KID and the separate disclosure of the costs of the insurance contract

Commission Delegated Regulation (EU) 2021/2268 includes a new requirement regarding the separate disclosure of the costs other than the costs of the underlying investment options (i.e. the costs of the insurance contract). This approach was considered relevant to assist the retail investor to be able to identify the total costs of investing in a particular investment option, as well as to provide greater transparency on the costs imposed by the MOP manufacturer. Given that the main challenges were considered to relate to the use of a generic KID, this approach was applied only to that case. When finalising their draft RTS, the ESAs received representation to suggest that the costs specific to the insurance contract are not always separable from the costs of the underlying investment options, and might vary depending on different investment options. Taking into account that this approach was not specifically subject to public consultation¹³⁰, as well as the limited time to conduct further analysis of the issue before finalising the RTS, the ESAs decided to apply this approach only where the contract or wrapper costs could be provided in a single figure¹³¹.

During this call for advice, the ESAs have also reflected on the use of cost ranges in the generic KID. The inclusion of ranges reflects, on the one hand, the requirement in the PRIIPs Regulation for the KID to include the total costs of PRIIP (Article 8(3)(f)), with, on the other hand, the fact that the costs will vary depending on the specific investment options selected. This issue was also considered during the review of the PRIIPs Delegated Regulation and in the October 2019 consultation paper the ESAs stated about the use of ranges that:

These can provide a relevant indication of how the costs and risk of the product vary depending on the investment option(s) selected. At the same time, depending on the nature of the MOP, some challenges have been identified based on the current approach. In particular, where very wide cost ranges are shown, it can be argued that the usefulness of this information is quite limited. This provides the retail investor with only a general idea of what the costs will be

¹²⁹ Usually with a performance guarantee

¹³⁰ The proposal was not included with the ESA consultation paper (JC 2019 63). It was proposed by a respondent to the public consultation.

¹³¹ Given that it was not considered beneficial to introduce an additional cost range (a range of costs for the insurance contract and a range of costs for the investment options), it was specified that this approach should apply only where the contract or wrapper costs can be provided in a single figure.

depending on their choices. They can only know that costs may fluctuate a lot and what the extremes of their fluctuations are.

The ESAs asked for further feedback relating to both these issues during the Call for Evidence. As stated above, the consumer associations that responded stressed the need for separate disclosure of these costs. One consumer association also argued that cost ranges should be avoided because there are too many figures that can confuse consumers. On the other hand, the industry respondents generally highlighted challenges to make a split between the costs specific to the insurance contract and the costs specific to the underlying investment options.

Taking into account this feedback, the ESAs' analysis is as follows:

- The ESAs see substantive benefits to this additional transparency and consider that it can be relevant to introduce such a split or breakdown between the costs of the insurance contract and the costs specific to the investment options in all cases, in order to provide for a consistent approach and level of transparency. This would also include where a PRIIP manufacturer prepares a KID per investment option (Article 10a of the PRIIPs Delegated Regulation). Following Commission Delegated Regulation (EU) 2021/2268, this split could be introduced without changes to the PRIIPs Regulation.
- The ESAs did not consider the argumentation provided regarding the challenges to make a split between the costs of the insurance contract and the cost specific to be investment options to be convincing and tend to think that it should be technically feasible to present such a split. In addition, in case there were challenges for a PRIIP manufacturer to present this split of costs within the generic KID, it would be possible to provide a KID per investment option.
- An approach where the costs of the insurance contract are provided in a generic KID (as a single figure), and the costs of the underlying investment option (as a single figure) are provided in the specific information document could have benefits in terms of consumer understanding. As well as bringing transparency on the split between the insurance contract and investment option costs, this would avoid the use of cost ranges. It might also be more intuitive for the retail investor and better allow them to compare between both different insurance contracts and different investment options. A potential drawback of this approach relates to the understanding of the impact of the costs of the insurance contract and this is discussed in the next sub-section. It can also be argued that the current approach in the generic KID means that all of the costs of the MOP are provided in this document and this allows comparability with other PRIIPs. However, given that these costs are in the form of ranges, any benefits in terms of comparability are considered to be limited. Overall, given the potential relevance of this approach, changes to the PRIIPs Regulation are recommended to ensure that this would be a possible option within a future PRIIPs Delegated Regulation.

3.9.3 Clarity on the impact of the costs of the insurance contract

There are different interpretations as to whether the information on each underlying investment option (the specific information document in accordance with Article 14 of the PRIIPs Delegated

Regulation), needs to include only the costs specific to that investment option or also the costs of the insurance contract and therefore include the total costs of investing in that option.

It is understood that in most cases only the costs specific to the investment option are included. This can be seen to follow, for example, from the Title of Article 14 of the PRIIPs Delegated Regulation. It can also be seen to provide an equivalence in treatment to the approach possible where the investment option is a UCITS – in this case while UCITS have been exempted from providing a KID, it has been possible for the MOP manufacturer to refer the retail investor directly to the UCITS KIID. On the other hand, it is stated in recital 18 of the PRIIPs Delegated Regulation that ‘the specific information should always reflect the features of the PRIIP through which the underlying investment options are offered’.

This approach to include only the costs specific to the investment option has practical advantages for PRIIP manufacturers as they can more easily use the information prepared by the asset manager (for externally managed funds, i.e. funds where the manager is not part of the group). This point was highlighted during the Call for Evidence, and it was noted in particular that some MOPs have a very high number of options, and also that the same investment option can be offered in different MOPs.¹³²

However, the drawback of this approach is that the retail investor might not appreciate the impact of the overall costs of the product. In particular, the performance scenarios in the specific information document do not reflect the costs of the insurance contract.

The ESAs are of the view that it is preferable for the specific information document to reflect all the costs of the products. At the same time, the ESAs recognise that it might not be proportionate to require this in all cases, in particular where the costs of the insurance contract are not material. The ESAs, therefore, propose to require the inclusion of all product costs in the specific information document, where the costs of the insurance contract are significant, i.e. above a certain level or threshold. This threshold could be calibrated in the PRIIPs Delegated Regulation. However, it has been argued that it is not possible to require the costs of the insurance contract to be included in the specific information document because Article 6(3) states that:

the key information document shall provide at least a generic description of the underlying investment options and state where and how more detailed pre-contractual information documentation relating to the investment products backing the underlying investment options can be found

Consequently, changes to the PRIIPs Regulation are recommended in order to ensure that such an approach could be taken within a future PRIIPs Delegated Regulation (see the specific proposal below). Lastly, it can also be noted that this approach might need to be adapted depending on any changes to the existing requirement for ‘performance scenarios’ in the PRIIPs Regulation (see Section 3.8).

3.9.4 Helping retail investors to compare between different investment options

When considering the appropriate investment options, it is expected that retail investors might wish to conduct first an initial filtering between investment options, for example based on the

¹³² This means that if the information about that investment option would need to include the costs of the insurance contract, a different KID would need to be prepared for that investment option for each MOP.

recommended holding period, SRI or other core features (e.g. general type of investment exposure – equity, real estate, sustainable investment objective, etc.). While the KID could be used for this purpose, it is not considered fully straightforward to do so, in particular where there is a high number of investment options. In this case, it would involve looking at a large number of documents and in an online context potentially opening different links to different KIDs or specific information documents.

Consequently, it would be beneficial for retail investors if there would be a way to filter more easily between investment options, either by using an online filtering tool or by having very short high-level information on each investment option in the same place or document (i.e. a summary table). An example of the type of information that could be used as a basis for this filtering is included in an Annex 11. Having done an initial filtering, the retail investor would then be able to consult the KID or specific information document in order to find further information regarding a more limited set of investment options that they are interested in.

The existing legislative provisions are not considered to preclude the use of these approaches and it is expected that some PRIIPs manufacturers or distributors will already have such filtering tools. However, the ESAs consider such a filtering mechanism would be useful in all cases, and therefore should be an explicit part of the “package” of information to be provided for MOPs. The ESAs, therefore, recommend this is specified in the PRIIPs Regulation. The details of the nature or content of this filtering mechanism, could then be addressed in the PRIIPs Delegated Regulation.

3.9.5 A more tailored KID reflecting a combination of investment options

One of the main purposes of a MOP is to allow retail investors to allocate their premiums between different underlying investment options at the same time. However, as stated in the Introduction to this section, information on the combination of options is not explicitly required. As also stated above, in the Final Report (JC 2020 66), the ESAs provided their view that the optimal way to address the challenges for MOPs would be to use digital solutions. This was on the basis that this would allow the retail investor to be informed about the implications of different combinations of investment options.

A number of respondents to the Call for Evidence addressed this type of approach with some different views expressed. Several respondents were in favour of the use of a type of “real-time” KID representing the specific investment that the retail investor is considering. Several other respondents saw this type of approach as costly to implement from an IT perspective.

As signalled in the Final Report (JC 2020 66), the existing PRIIPs Regulation may not be compatible with a more tailored KID. As explained in the point 23 of the Commission Guidelines on PRIIPs, there needs to be consistency between the KID provided to retail investors and the KID published on the website of the PRIIPs manufacturer.

At the same time, the information provided during the sale of these products might already reflect the specific options that are being considered. This includes, for example, that it might not be appropriate or relevant to provide information on all of the investment options offered within a particular MOP to the retail investor as addressed in an ESA Q&A.¹³³ It is also expected that distributors might already have tools to illustrate the combination of different investment options. Furthermore,

¹³³ Question 1 in section MOPs (published 20 November 2017).

it is understood that in some Member States more personalised information, such as reflecting specific investment options, is provided in order to comply with the obligations in IDD or Solvency II.¹³⁴

Taking this into account, the ESAs are of the view that:

- It is likely to be more useful for a retail investor to receive a more tailored KID that combines different investment options in order to better illustrate the nature of the product they are considering to invest in, and that it is relevant to adjust the PRIIPs Regulation to ensure that this is possible.
- Such a KID could be tailored to the individual retail investor in terms of reflecting how the premium might be allocated between different investment options, for example an overall SRI or performance information.¹³⁵ At the same time, it can be appropriate for other information to remain more standardised, such as the example investment amount.
- Where this combination of options does not represent a change to the features of the product – it simply represents how a specific retail investor is considering to use the product – it should not be necessary for the PRIIP manufacturer to revise the KID that is published on their website.

Although, within the time constraints of this review, the ESAs have not been able to analyse the issue in depth, the ESAs would like to mention that there can be a link between the provision of the more tailored KID by the distributor and the requirements in Article 11 of the PRIIPs Regulation regarding the liability of the PRIIP manufacturer for the contents of the KID. In this context, it is important that liability remains with the PRIIP manufacturer given that the content of a tailored KID will still be derived from the KID drawn up by the PRIIP manufacturer and thus the issues regarding the information provided, as described in Article 11(1), are likely to be due to the KID prepared by the PRIIP manufacturer, rather than the KID reflecting the combination of investment options prepared by the distributor. However, it could be considered whether it is relevant that the distributor is also liable to a limited extent, regarding specifically any issues arising from the combination of investment options.

Advice on MOPs

The ESAs recommend changes to the PRIIPs Regulation with the aim of allowing the approaches discussed in this section on MOPs to be possible within the PRIIPs Delegated Regulation, and specifically to:

- Delete paragraph 3 of Article 6 and replace it with:

By way of derogation from [reference to the existing paragraphs 2 and 4 of Article 6], where a PRIIP offers the retail investor a range of options for investments, the PRIIP

¹³⁴ This disclosures for IBIPs under IDD and Solvency II are discussed in the parallel call for advice to EIOPA, ([EIOPA consults on its proposals on Retail Investor Protection | Eiopa \(europa.eu\)](#)).

¹³⁵ The details of how these elements would be amalgamated could be specified in the PRIIPs Delegated Regulation, but it is envisaged that it would involve a simple combination of the existing information (e.g. a weighted average SRI based on the proportion of the premium invested in each option), rather than any substantial new calculation or modelling.

manufacturer may provide the information required by Article 8(3) with regard to the different investment options in separate documents.

The information provided relating to each underlying investment option shall:

- i) take into account the impact of the costs of the PRIIP other than the costs for the underlying investment option, at least to the extent that these costs have a significant effect on the return of the investment;*
- ii) be of a maximum of three sides of A4-sized paper when printed.*

In addition, PRIIP manufacturers shall facilitate comparison between different underlying investment options through the use of a summary table or other comparison tool, such as a filtering mechanism.

The derogation proposed intends to refer only to the requirement for the KID to be a 'stand-alone document' in Article 6(2) and to be a 'maximum of three sides of A4-sized paper when printed' in Article 6(4). The other requirements in these paragraphs should still apply. The page limit is not intended to apply to the summary table given this might need to be longer than 3 pages, in case a high number of investment options is offered.

- Add the following provision to Article 13:

Where the PRIIP offers the retail investor a range of options for investments, the person advising on, or selling, the PRIIP shall either provide the retail investors with:

- (a) key information documents relating to those investment options that the retail investor is considering; or*
- (b) a key information document which reflects the combination of investment options that the retail investor is considering.*

The provision of a key information document in accordance with point (b) does not require a revision of the key information document in accordance with Article 10.

3.10 Information in the KID on environmental or social objectives targeted by the product

3.10.1 Introduction

A number of respondents to the Call for Evidence argued for guidance or further specification regarding how information on environmental and social objectives (EOS) in accordance with Article 8(3)(c)(ii) of the PRIIPs Regulation should be included in the KID taking into account the rules now developed under the SFDR and the financial product disclosures under the Taxonomy Regulation. The ESAs have analysed this issue and would recommend some changes to the PRIIPs Regulation.

3.10.2 Context

The PRIIPs Regulation currently includes a requirement for EOS information to be included in the KID as part of the product's objectives within the 'What is this product?' section (Article 8(3)(c)(ii)), where this is applicable.¹³⁶ There are two empowerments relating to this provision for delegated acts and RTS respectively:

- For the Commission, in Article 8(4) regarding the procedures used to establish whether a PRIIP targets specific EOS objectives;
- For the ESAs, in Article 8(5)(a) regarding the presentation and content of the KID, thereby including also the information on EOS objectives.

In the context of the empowerment in Article 8(4), the ESAs provided technical advice to the Commission in July 2017. The Commission has not so far exercised this empowerment. The ESAs have also not further specified the content of the information on EOS objectives based on the RTS empowerment. Consequently, the description of any EOS objectives targeted by the product would need to comply with the other relevant rules in the Regulation, such as that the information is 'accurate, fair, clear and not misleading' (Article 6(1) of the PRIIPs Regulation).

This absence of more detailed rules in the delegated measures under PRIIPs reflects that separate EU legislative initiatives have been under development in the area of sustainable finance. This has included, in particular, the issuance of the SFDR in 2019, followed by the ESAs' draft RTS, specifying the content and presentation of sustainability-related disclosures in the prospectus of investment funds, in the KIDs of PEPPs, and, for IBIPs as part of pre-contractual disclosures to policy holders under Solvency II¹³⁷.

In SFDR, products that have an EOS objective are limited to those products which have a sustainable investment objective (so-called Article 9 SFDR products) and comply with the 'do not significantly harm' rule. That excludes products that 'promote environmental or social characteristics', (so-called Article 8 SFDR products) which do not have, as such, a sustainable investment objective even though they might make some sustainable investments.

3.10.3 ESAs' analysis and recommendations

¹³⁶ The text states specifically 'including, where applicable, specific environmental or social objectives targeted by the product'.

¹³⁷ It is relevant to note that SFDR does not apply to certain types of financial products that are within the scope of PRIIPs such as structured products or derivatives. The SFDR Delegated Regulation will apply as of 1 January 2023.

Taking into account the developments since the PRIIPs Regulation was drafted, as well as the importance of sustainable finance initiatives, the ESAs are of the view that it should be prominent within the KID whether a PRIIP has an EOS objective and whether a product promotes environmental or social characteristics. The ESAs are also of the view that the approach and terminology used in PRIIPs should be aligned with those in SFDR. On this basis, the ESAs would propose:

- To include a separate section within the KID template to present this information. This could be placed either before or after the ‘What is this product section?’¹³⁸ and an example of how this could be done is included below, as well as within Annex 12 to show how this section would form part of the overall KID template.
- This section is included in the KID for all PRIIPs, but in order to provide consistency with the SFDR and to avoid unjustified claims about sustainability, the ESAs think it would be appropriate to limit the type of PRIIPs that can show that they have a sustainable investment objective or that they promote environmental or social characteristics to financial products under Articles 8 and 9, SFDR (see Article 2.12, SFDR).
- Given that the current PRIIPs Regulation includes titles for the different sections of the KID, the ESAs considered what could be appropriate, and think that “Does this product have a sustainable investment objective?” could be used as the title. This is the first question used at the beginning of the SFDR product templates and was consumer tested by the ESAs during the development of the SFDR templates. It can be used to clearly differentiate products that have a sustainable investment objective (Article 9, SFDR), from products that promote environmental or social characteristics (Article 8, SFDR). The intention is that the response to the question could only be positive for products that have a sustainable investment objective, while products that promote environmental or social characteristics would answer negatively and add that they promote environmental or social characteristics. It is intended that all other PRIIPs would answer negatively. However, it can be relevant to take into account further developments in this area, such as regarding the European green bond standard¹³⁹.
- The information included should only be brief and even if a separate section is used, it should not be a basis for increasing the length of the KID. In other words, the change from the existing PRIIPs Regulation should not *per se* result in the inclusion of more information, but to present this information more prominently and provide for appropriate consistency with the information in the SFDR disclosures. This section could include, for example, the minimum share of sustainable investments included in the financial product and the minimum share of taxonomy-aligned investments, as well as a link or cross reference to the SFDR disclosures (see the example in Annex 12). However, taking into account potential challenges for certain types of retail investors to understand this information and the terms used, the ESAs consider that it is important to conduct consumer testing before deciding on the content and terminology, while also not aiming to diverge significantly from the SFDR which would otherwise risk confusion and greenwashing. In this respect, the ESAs recommend that it would

¹³⁸ Please note the ESAs’ proposal in Section 3.5.2 regarding the general preference to test the sequence and titles of the sections of the KID.

¹³⁹ [European green bond standard | European Commission \(europa.eu\)](#)

be more appropriate to specify these details in the PRIIPs Delegated Regulation, as well as the application to other cases, such as for MOPs.

- The use of a separate heading is considered coherent with a separate sub-section on the broader product objectives in the ‘What is this product?’ section, since the information on a sustainable investment objective would provide only a short indication of the “sustainability”, while the product objectives would cover more broadly the underlying investment instruments or reference values. The latter might still draw on, and would need to be consistent with information disclosed under SFDR.

Example of the possible contents of this section

Does this product have a sustainable investment objective?

Yes No, but it promotes environmental or social characteristics No

- Minimum share of sustainable investments: x%
- Minimum share of investments in economic activities that qualify as environmentally sustainable under the EU Taxonomy: y%
- Does this financial product consider principal adverse impacts on sustainability factors? Yes No

You can find more information at: www.greeninsurance.com

Although this is less preferred, an alternative approach that is considered to be an improvement on the structure of the current KID template, would be to include this information in a separate sub-heading within the existing ‘What is this product?’ section. It is understood that this would not require changes to the PRIIPs Regulation, such that it could be done via an amendment to the PRIIPs Delegated Regulation.¹⁴⁰

Advice on information in the KID on environmental or social objectives targeted by the product

The ESAs recommend to include a new section in the KID to show prominently where, in line with SFDR, a PRIIP has sustainable investment as its objective or it promotes environmental or social characteristics. This could be done via:

- the inclusion of a new point in Article 8(3) of the PRIIPs Regulation along the lines of ‘information on whether the product has sustainable investment as its objective or it promotes environmental or social characteristics under a section titled ‘Does this product have a sustainable investment objective?’’; and

¹⁴⁰ While the existing sub-headings in the ‘What is this product?’ section follow points (i) to (v) within Article 8(3)(c) of the PRIIPs Regulation, for other parts of the template the subheading do not follow exactly the list of information items in Article 8.

- the deletion of the following text from the existing Article 8(3)(c)(iii) of the PRIIPs Regulation, 'including, where applicable, specific environmental or social objectives targeted by the product'.

The ESAs recommend that further details on the content of the section are specified in the PRIIPs Delegated Regulation.

The ESAs recommend to align the wording in Article 8 (4) of the PRIIPs Regulation with the SFDR definition in order to avoid misunderstanding or misalignment between the KID and the SFDR disclosure documents.

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

3.11.1 Call for Evidence

(i) Overall feedback

Regarding the cost section of the KID, and in particular the alignment between PRIIPs and IDD and MiFID II on cost disclosure, the overall feedback from the Call for Evidence can be summarised as follows:

- Generally speaking, several respondents indicated that a full alignment of the cost information in the KID with the information provided under MiFID II cost disclosure is of utmost importance, arguing that having different cost figures disclosed in different documents is confusing for an investor and undermines the objective of transparency and comprehensibility. An alignment with IDD was also mentioned by several respondents.
- Although several respondents acknowledge that the revised PRIIPs Delegated Regulation (Commission Delegated Regulation 2021/2268) has already significantly improved the alignment between PRIIPs and MiFID II, most respondents were of the view that more can be done and that the revised PRIIPs Delegated Regulation still leads to inconsistencies in the figures disclosed to investors in KIDs and the required disclosures under MiFID II. Certain respondents were of the view that MiFID II, instead of PRIIPs, should provide the overall cost disclosure points and methodologies. In that context, a few respondents indicated that an efficient way to reach such harmonization would be to simply remove the cost disclosure requirements from the KID for products subject to MiFID II.

(ii) Remaining inconsistencies between PRIIPs and MiFID II, as pointed out by respondents

Regarding the remaining inconsistencies between PRIIPs and MiFID II specifically, the following main comments were made:

- Respondents acknowledged that the use, in the revised PRIIPs Delegated Regulation, of the zero-growth assumption for the disclosure of costs after one year permits a better alignment between PRIIPs and MiFID II, but some respondents still pointed out that the use of the RIY methodology (based on a growth rate corresponding to the moderate scenario whereas *ex ante* information prepared in the MiFID II context is often based on a zero-growth assumption) means there is not an alignment between the two pieces of EU legislation.
- Certain respondents highlighted that while product costs under the PRIIPs Regulation include inducements, these have to be itemised separately under MiFID II (as part of the service costs or a separate line). MiFID II product costs have therefore to be disclosed without inducements, which creates a misalignment between PRIIPs and MiFID II.

- Certain respondents are still of the view that the costs in KIDs should be changed to a Total Expense Ratio (TER) approach, which then enables the addition of service costs. In the view of these respondents, the costs of intermediary structures should be highlighted and disclosed clearly to the retail investor, including the percentage of costs attributable to the remuneration of financial advisors.

(iii) Comments specifically related the revised PRIIPs Delegated Regulation

Respondents made several additional technical comments or questions related more specifically to the revised PRIIPs Delegated Regulation. This included, for example, the calculation of performance fees and the interaction with the assumption of 0% growth, the high number of cost figures displayed in the cost section of the KID, which could reduce retail investors' comprehension of the KID, transaction costs related issues (in relation for instance to anti-dilution mechanism¹⁴¹), and the extent to which the insurance premium should be considered as a cost.

3.11.2 Assessment of the ESAs on the cost alignment between PRIIPs and MiFID II and IDD

The ESAs agree that it is vital to try to ensure that the information that retail investors receive under different investor protection frameworks are consistent. The ESAs also acknowledge the feedback received on the cost alignment related issues between PRIIPs and MiFID II and IDD, as referred to below, and in particular the views expressed by respondents that certain inconsistencies remain, in their view, between the different cost disclosure frameworks.

In terms of the substance of the comments provided, these all concern elements that are addressed in the PRIIPs Delegated Regulation rather than in the PRIIPs Regulation¹⁴². However, the ESAs acknowledge:

- The comments made by respondents on the alignment between the PRIIPs and MiFID II and IDD cost disclosure frameworks, and note that the respective advice by ESMA and EIOPA on the retail investment strategy, are precisely aimed to address these issues.
- The various comments received from respondents on the cost disclosure requirements included in the revised PRIIPs Delegated Regulation. In relation to these comments, the ESAs have started working on Level 3 guidance to help market participants to implement the revised PRIIPs Delegated Regulation, so that, as far as possible, this guidance is published in advance of the implementation date for these new requirements, due to be 1 January 2023.

¹⁴¹ With regards to the calculation of transaction costs for AIFs and UCITS funds using dual pricing and possibly also swing pricing, where a newly introduced floor to transaction costs puts a limit on the impact an anti-dilution mechanism can have.

¹⁴² The provision in the PRIIPs Regulation is as follows: "under a section titled 'What are the costs?', the costs associated with an investment in the PRIIP, comprising both direct and indirect costs to be borne by the retail investor, including one-off and recurring costs, presented by means of summary indicators of these costs and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment. The key information document shall include a clear indication that advisors, distributors or any other person advising on, or selling, the PRIIP will provide information detailing any cost of distribution that is not already included in the costs specified above, so as to enable the retail investor to understand the cumulative effect that these aggregate costs have on the return of the investment".

The ESAs also note that some of the above mentioned cost disclosure related issues referred to by respondents are related to the more general issue of differentiation, referred to in the section 3.7 of this advice. In that context, the ESAs note that a certain degree of differentiation has already been introduced in the cost disclosure requirements of the PRIIPs KID, since the second cost table (composition of costs) is now different, depending on the type of PRIIP, but further adjustments could be analysed if this principle of allowing further differentiation would be introduced.

3.12 Successive transactions according to Article 13(4) of the PRIIPs Regulation

Article 13(4) of the PRIIPs Regulation stipulates that ‘where successive transactions regarding the same PRIIP are carried out on behalf of a retail investor in accordance with instructions given by that retail investor to the person selling the PRIIP prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall apply only to the first transaction, and to the first transaction after the key information document has been revised in accordance with Article 10’.

It is not completely clear what kind of products or transactions are intended to be captured by ‘successive transactions regarding the same PRIIP’. A survey that the ESAs conducted with NCAs did not show a clear picture. Some NCAs apply this Article to unit-linked IBIPs, others stated that they think “regular saving plans” are captured by this wording. If regular saving plans are meant, this provision will be key when UCITS come into the scope of the PRIIPs Regulation.

Under the current UCITS regime regular saving plans provide a KIID before the first transaction is done, and if the customer makes changes, for example, to the investment amount or wishes to switch the underlying UCITS.

In the survey conducted with NCAs, two NCAs which have observed regular saving plans in their markets, supported to change Article 13(4) of the PRIIPs Regulation to apply the current UCITS provision. This would mean that the retail investor receives less documentation, as otherwise there is a risk of an information overload. Furthermore, regarding the changes to his or her investment, the retail investor will already be kept informed due to the MiFID II requirements. Hence, in this context where the saver is only continuing to contribute into the same UCITS, the additional provision of the revised KID seems not to be key information. If the retail investor wants to read it, the KID will be accessible on the PRIIP manufacturer’s website. Therefore, it seems appropriate to change Article 13(4) of the PRIIPs Regulation.

A proposal was already made on this issue in the ESA Final Report on draft RTS to amend the PRIIPs KID (JC 2020 66). The proposal aims to strike a balance between the current Article 13(4) of the PRIIPs Regulation and the current UCITS regime. The proposal should mitigate the danger of information overload for the retail investor and should foster the acceptance of the PRIIPs KID.

Advice on successive transactions

The ESAs recommend to amend Article 13(4) of the PRIIPs Regulation as follows:

Where successive transactions regarding the same PRIIP are carried out on behalf of a retail investor in accordance with instructions given by that retail investor to the person selling the PRIIP prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall apply only to the first transaction, and to provide a detailed description where the revised key information document in accordance with Article 10 can

be found. Additionally, prior to an additional subscription, the latest revised version of the key information document shall be provided to the retail investor upon request.

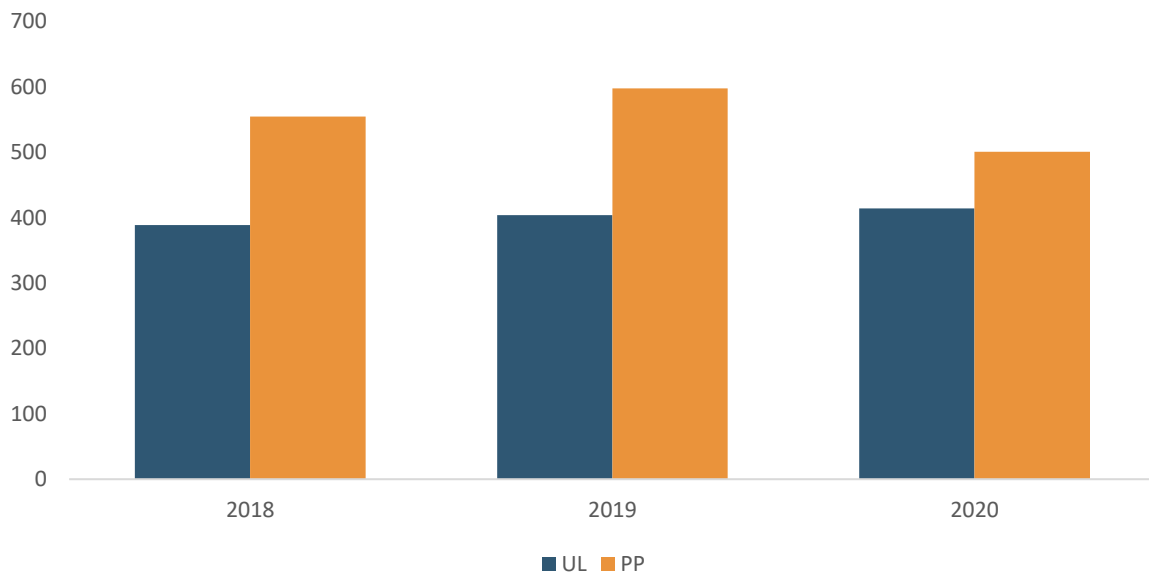
Annex 1 – Solvency II data

As explained in Section 3.1.1, this Annex presents information for IBIPs based on the data reported for Solvency II in view of the request from the Commission to provide evidence on the number and type of products¹⁴³, their market share and recent market developments and trends.

1) Market size analysis based on gross written premium (GWP)

Figure 1 shows an ongoing shift from profit-participation (PP) towards unit-linked (UL) business. There is a significant impact (reduction) in the overall market size in 2020, after the overall market had grown to over 1 trillion in 2019. Figure 2 shows that at a global level, France, Italy, Germany, Ireland and Denmark are the largest markets. The significant stress in the French market in 2020 drove the overall reduction in the IBIPs market in 2020. Even though unit-linked is becoming the most representative business across the EU, there are still some markets where profit participation takes over 50% of the total market (Figure 3).

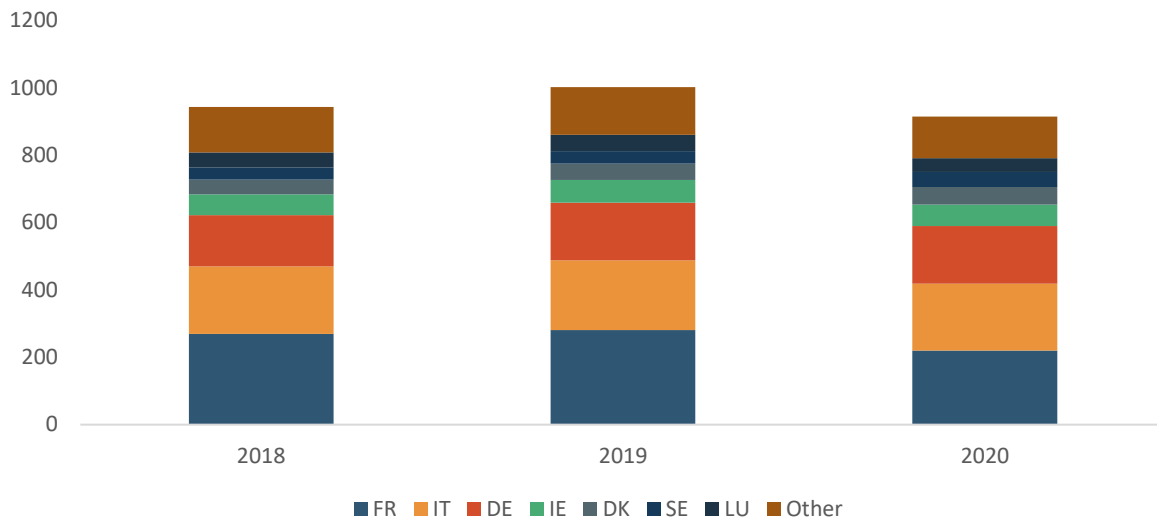
Figure 1 - Market size by line of business (unit-linked and profit participation) (EUR billion), EEA, 2018-2020



Source: Solvency II database

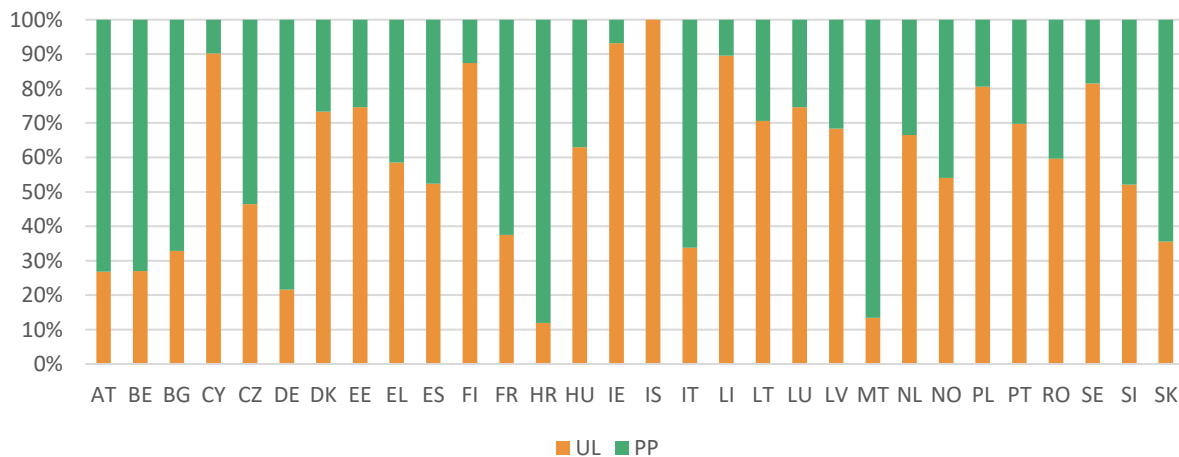
¹⁴³ It is relevant to note that the split between unit-linked and profit participation business on the basis of Solvency II data does not give evidence regarding IBIPs directly, but regarding these lines of business, since hybrid products (combining unit-linked and profit participation elements) are a material product category but are not captured separately.

Figure 2 - Trend in market size (EUR billion) by Member State



Source: Solvency II database

Figure 3 - Breakdown unit-linked vs profit-participation by Member State, 2020

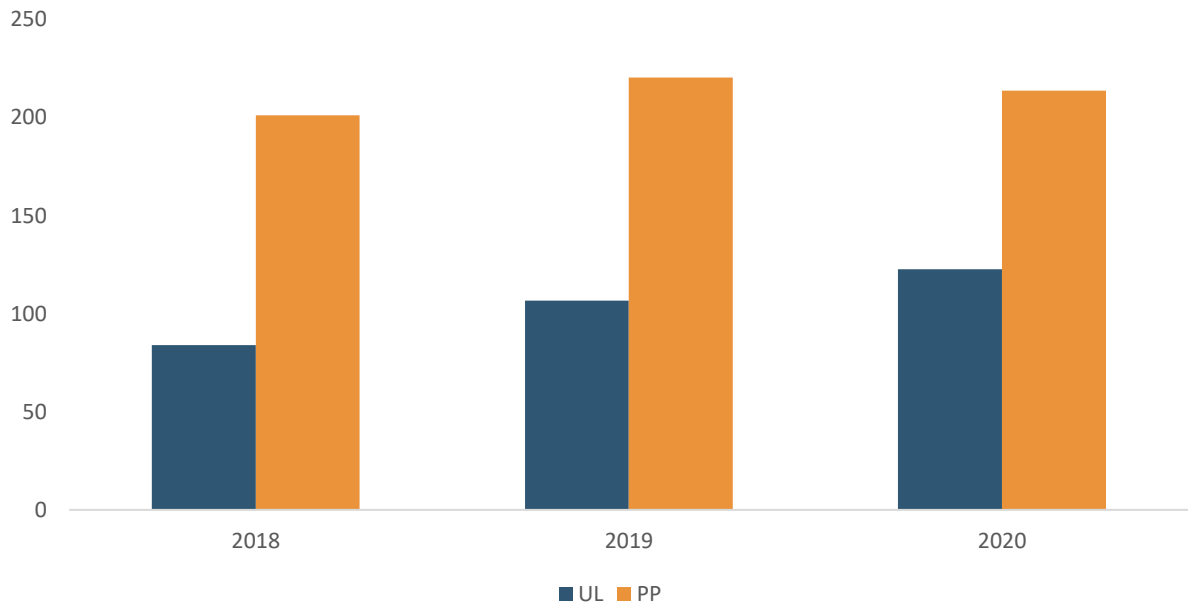


Source: Solvency II database

2) Market size analysis based on the contracts (at the end of the year)

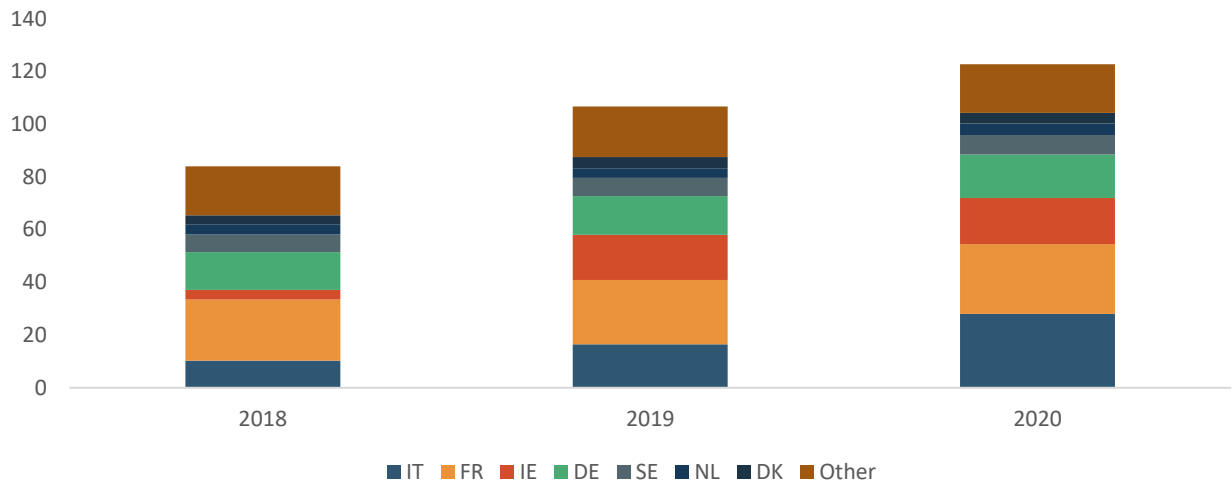
Over this period, the trend is a growth in the number of contracts, but this figure requires some cautious considerations as it is a stock variable (figure 4). All the contracts are taken into account at the end of the year. Similar to the gross written premium figures, Italy, France, Ireland and Germany are the largest markets (figures 5 and 6). It is a good metric to provide further evidence that these are the most relevant markets in IBIPs.

Figure 4 - Market size (number of contracts million) split by unit-linked and profit participation, EEA, 2018-2020



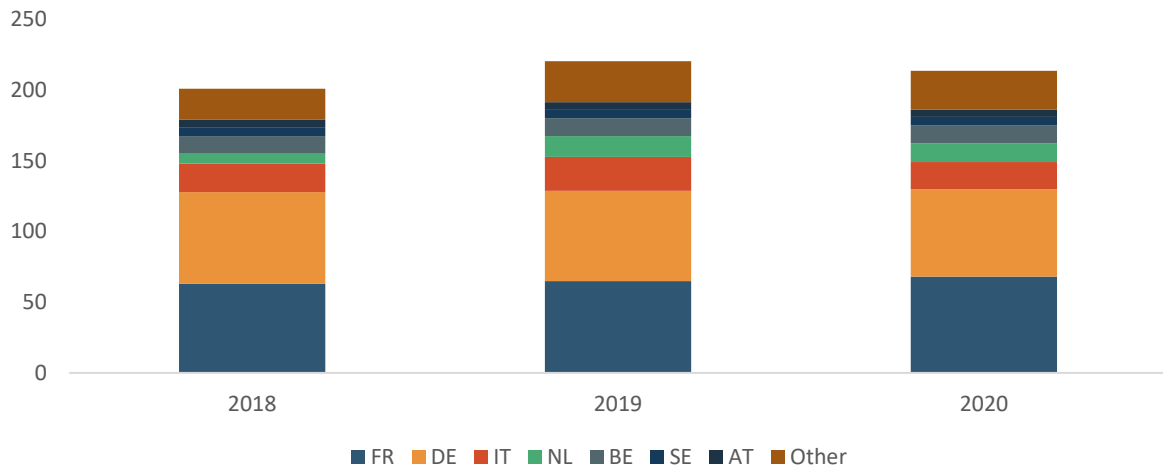
Source: Solvency II database

Figure 5 - Unit-linked market size (number of contracts million), EEA, 2018-2020



Source: Solvency II database

Figure 6 - Profit participation market size (number of contracts million), EEA, 2018-2020

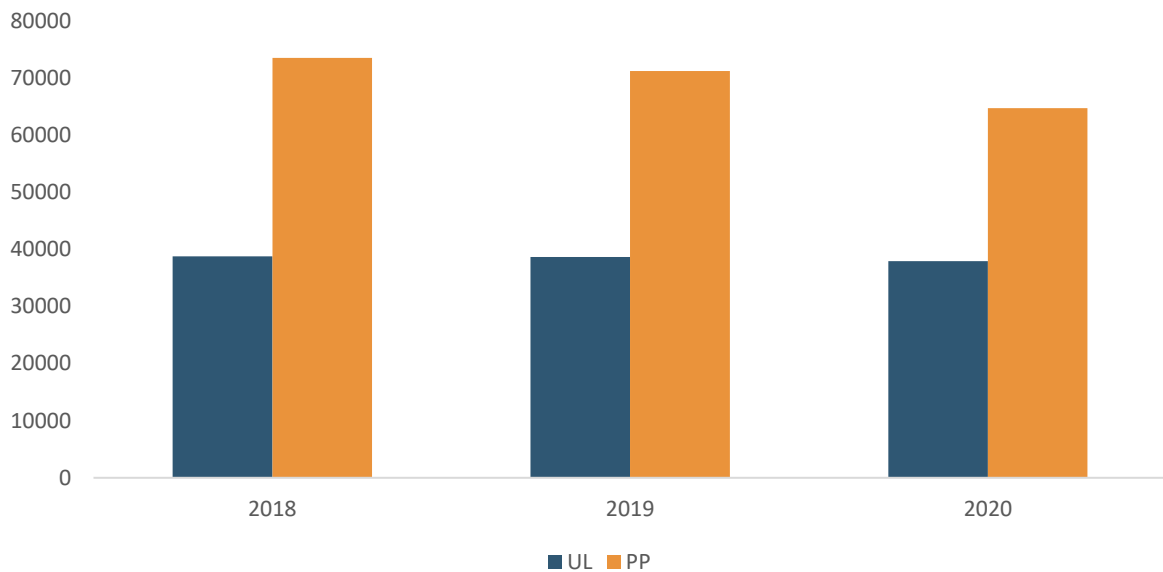


Source: Solvency II database

3) Market size analysis based on the contracts (new)

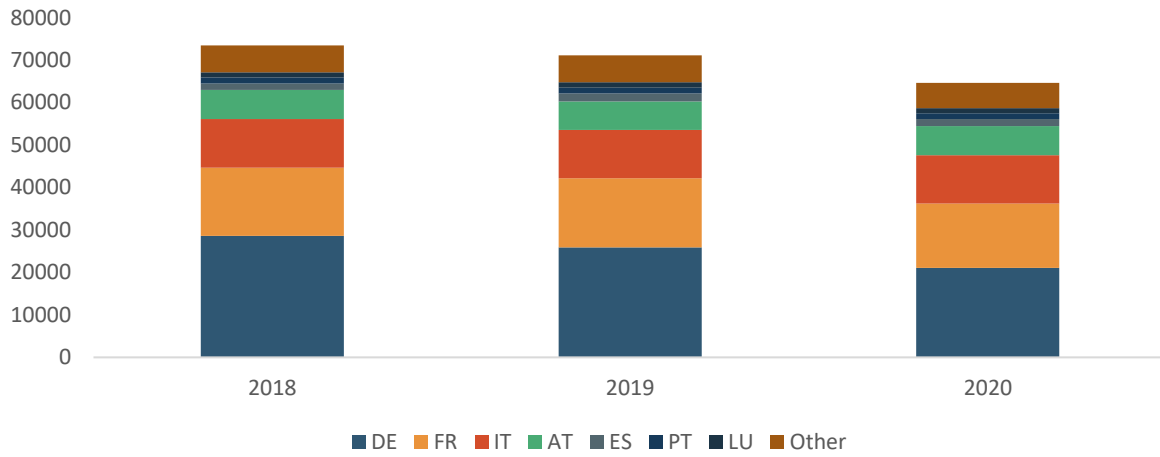
The number of new contracts allows for measuring the actual new production and expansion or contraction of the market (figures 6-8). The number of new contracts has overall shrunk since 2018 (over 10%). However, this decrease is considerably higher for profit participation business than unit-linked. Last year, the drop was 3.1% for profit participation whereas it was around 2% for unit-linked. Nonetheless, looking solely at this metric is not enough, since the overall premium written in each contract might have increased (as the trend in the gross written premium shows).

Figure 6 - market size (number of new contracts), EEA, 2018-2020



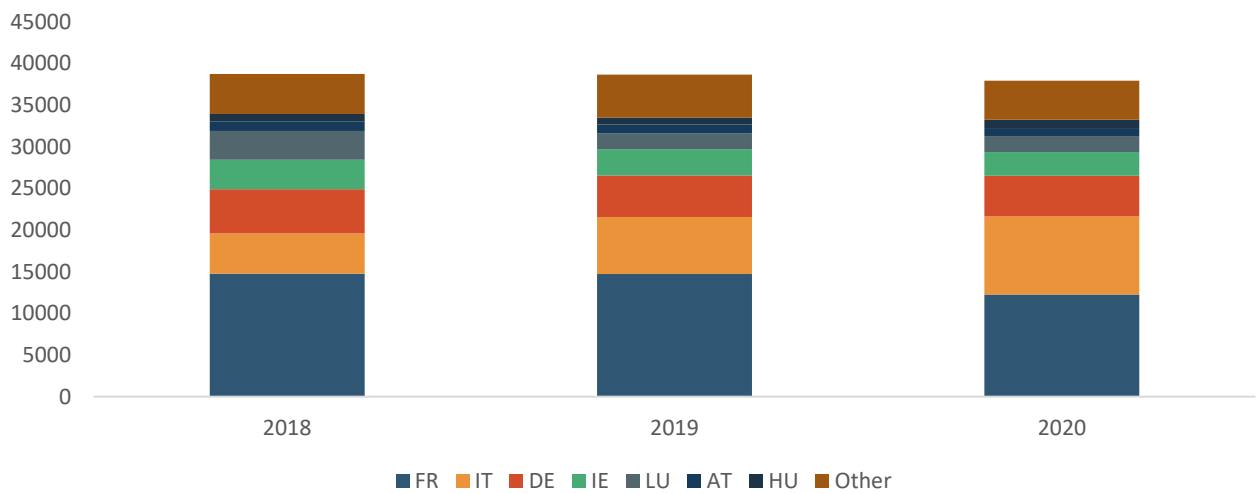
Source: Solvency II database

Figure 7 - Profit participation market size (number of new contracts), EEA, 2018-2020



Source: Solvency II database

Figure 8 - Unit-linked market size (number of new contracts), EEA, 2018-2020

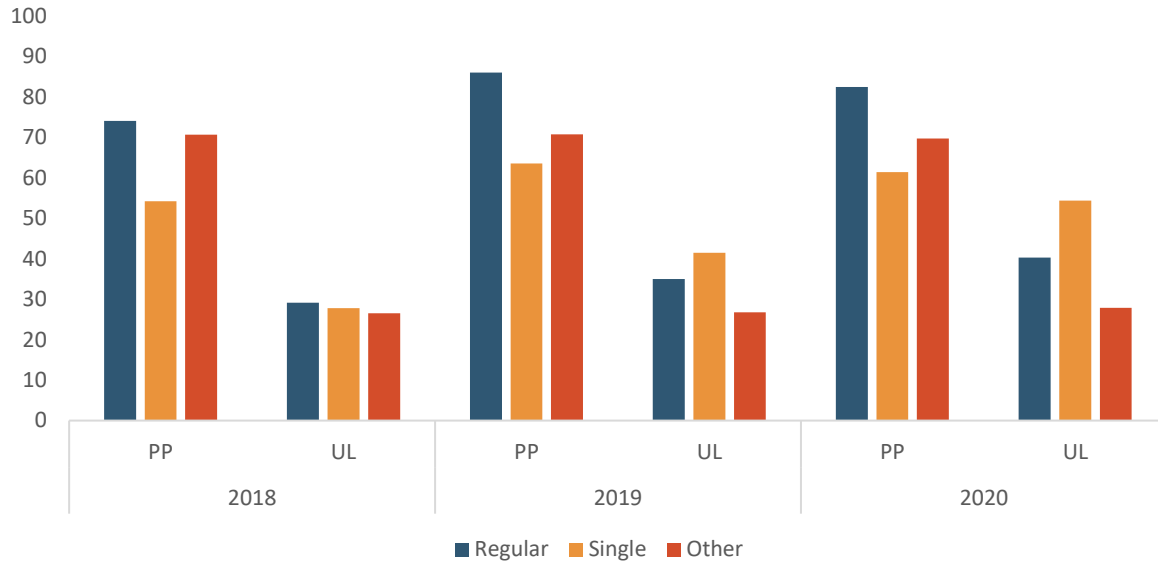


Source: Solvency II database

4) Analysis on the type of premium

Regular premium are the dominant type of contract (around 37%) at EEA level, even though 34% are linked to 'Other' type. There are no drastic changes over the years, and across markets (figure 9).

Figure 9 - Total number of contracts by type of premium, EEA, 2018-2020



Source: Solvency II database

Annex 2 – Information on insurance-based investment products from EIOPA costs and past performance report (2020 data)

As explained in Section 3.1.1, this Annex presents information on the type of IBIPs based on the data collected for the EIOPA costs and past performance report.

The analysis for the costs and past performance report is sample based and covers input from 160 insurance undertakings from 26 Member States covering more than 500 unit-linked and more than 80 profit participation products. Data is collected on an ad-hoc basis from insurance providers via NCAs.

The market coverage corresponding to the sample represents the market shares, measured in gross written premium terms, of the undertakings whose products have been submitted and analysed in this work.

In terms of gross written premium, all insurance undertakings, which provided data for one or more products account for:

- 60% of the European unit-linked market
- 62% of the European profit participation market

It is relevant to note that for the purpose of the analysis for the EIOPA costs and past performance Report, the notion of “product” follows a policyholder’s perspective – i.e., it looks at how products are perceived by consumers. Hence, in case of MOPs, an investment option (or a combination of a limited number of investment options) plus the wrapper (i.e. the insurance package used to carry the investment options) are considered as a single product. This perspective can differ from the manufacturer’s point of view where a product can be seen as all the possible investment options available plus the wrapper.

Annex I of the costs and past performance report presents in detail the methodology behind the analysis and the data collection.

For the purpose of this advice on PRIIPs, information from the sample for 2020 is presented as follows and shown in the figures below:

- For unit-linked products, a split by recommended holding period, summary risk indicator and number of underlying investment options (figures 10-12);
- For profit participation products, a split by recommended holding period and summary risk indicator (figures 13-14).

Figure 10 - Unit-linked: recommended holding period

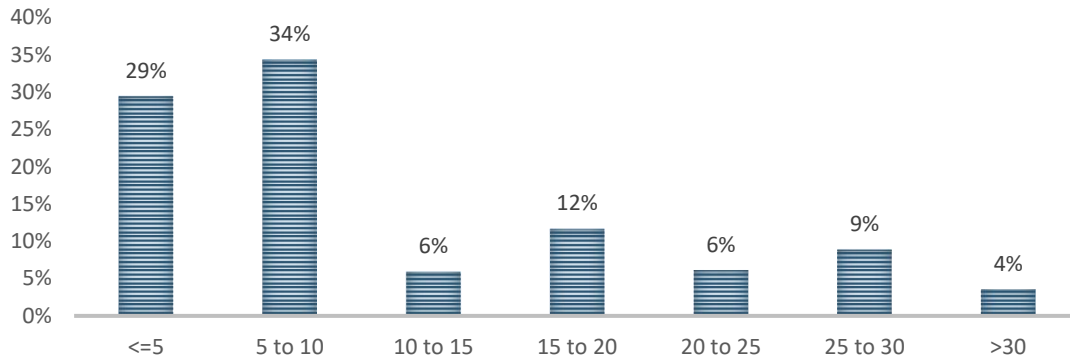


Figure 11 - Unit-linked: summary risk indicator

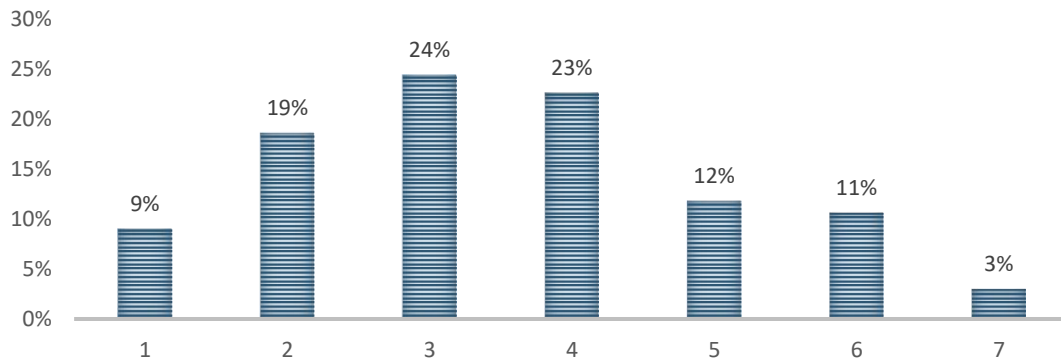


Figure 12 - Unit-linked: number of investment options

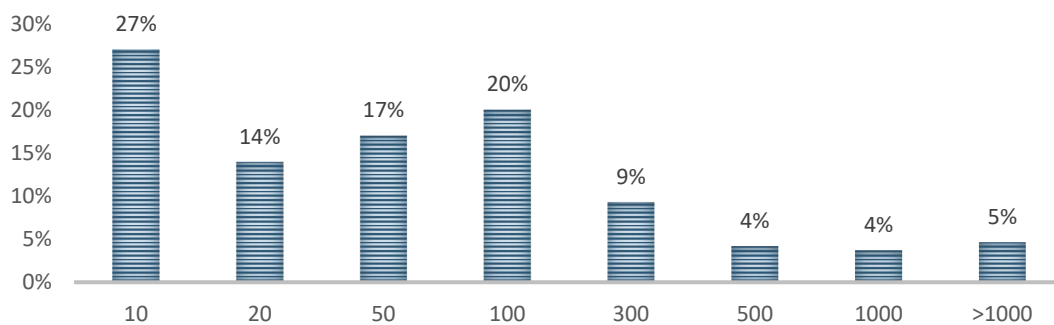


Figure 13 - profit participation: recommended holding period

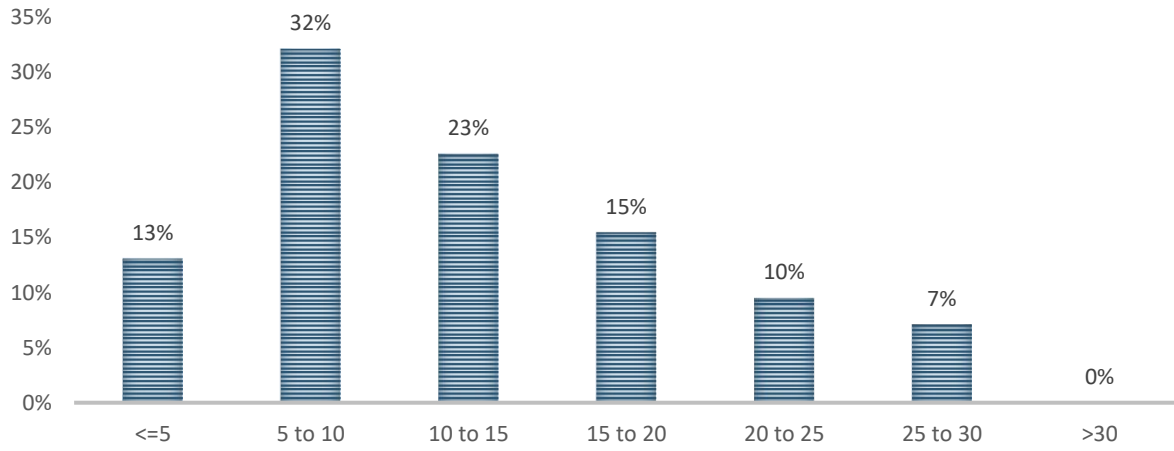
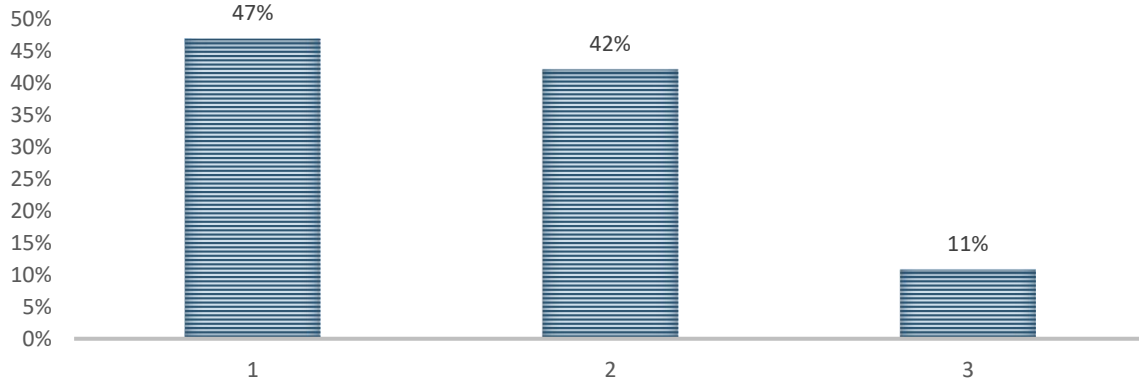


Figure 14 - Profit participation: summary risk indicator



Annex 3 – Data on PRIIPs based on sample of KIDs collected by ESMA

As explained in Section 3.1.1, this analysis is based on data relating to a sample of KIDs collected by ESMA, as well as market data from StructuredRetailProducts.com. The same sample of KIDs was also used as a basis for other analysis conducted as part of this advice including the analysis relating to the use of the comprehension alert (see Annex 7) and the analysis on KID consistency issues (see Annex 8).

Description of the sample of KIDs

The sample includes 47,100 KIDs issued between January 2018 and July 2021. Out of these, based on the content of the document and the product's ISIN (when present), around 2,000 were identified as IBIPs, and around 9,500 as funds.¹⁴⁴

Around two thirds of the KIDs (approximately 30,900) were downloaded via the financial data provider SRP.com, which also provides additional metadata associated with the PRIIP, among which is the underlying type, payoff type, issue date, countries of sale, and sales volume (actual or estimated). Among these products, only about 100 were identified as IBIPs, and around 2,000 as funds. The rest of the KIDs (approximately 16,200) were downloaded from financial entities' websites via web-scraping procedures.¹⁴⁵

The sample of documents to which the following analysis refers depends on the variables which are used in each specific piece of analysis, as some variables are available only for the products retrieved on SRP.com, and because values for specific attributes may be missing for some products. This is especially evident in the analysis of cost components (see Annex 8 on consistency issues), where document processing issues led to the exclusion of around 10,000 documents from the sample, on the grounds that it was not possible to extract the data contained in the two cost tables in the KID in their entirety.

Number and type of PRIIPs and their market share

The sample of KIDs can be used to provide descriptive statistics on the KIDs in the sample and the products to which these KIDs relate. The caveat is that – given the absence of a central repository for KIDs – it is difficult to estimate how much of the market the dataset covers, and the ESAs cannot guarantee that the sample is representative of the full population of KIDs produced. In this respect, the following points can be noted:

- The share of the market covered by SRP.com's database is not known, and whether there is a bias towards specific countries in the data collection process. Additionally, ESMA's SRP.com dataset is limited to structured retail products classified as "non-flow" by SRP.com. ESMA could not retrieve those products in SRP.com's database which are classified as "flow" and

¹⁴⁴ IBIPs were identified by the presence of at least one IBIP-specific performance scenario in the KID. Funds were identified either via their ISIN or by the presence of specific fund-related words in the KID. The identification may not be exhaustive. In particular, it was not possible to identify some IBIPs due to errors in the detection of the performance scenarios.

¹⁴⁵ Any KID found in this way which had already been downloaded via SRP.com was discarded.

those classified as “leverage”¹⁴⁶, which are issued in much larger numbers than “non-flow” products (i.e., millions of units), for only a minority of which a KID is available¹⁴⁷.

- Although the web-scraping routine used is run in a uniform way across each EU document language and is designed in the most general way possible by making use of Google’s search engine, it cannot be guaranteed that all KIDs made available in the web could be retrieved with this procedure.¹⁴⁸ Also, some PRIIP manufacturers make KIDs available only for a short period of time (updates of the database have been executed with a frequency varying between annual and semi-annual).

Notwithstanding these limitations, ESMA does not have reasons to suspect the presence of evident biases in the characteristics of the sample of KIDs. Moreover, the broad web-based KID collection routine is likely to rebalance potential specific shortfalls in SRP.com’s KID collection process.

Figures 15 to 17 show the total data for the period covered (January 2018 to July 2021).

Figure 15 shows the number of KIDs by document language. German-language KIDs are prevalent in the sample, followed by English KIDs, French, and Italian.¹⁴⁹ Thanks to documents gathered directly from financial entities’ websites, it is possible to see how a non-negligible number of KIDs are produced also in the languages of some smaller EU markets.

Figure 16 looks at the breakdown of KID by country of sale (not available for web-scraped KIDs). Germany is the country for which the relative majority of KIDs are produced, followed by Austria (a possible explanation for this is that it is cost-efficient for PRIIP manufacturers targeting the German market to distribute their products in Austria as well).

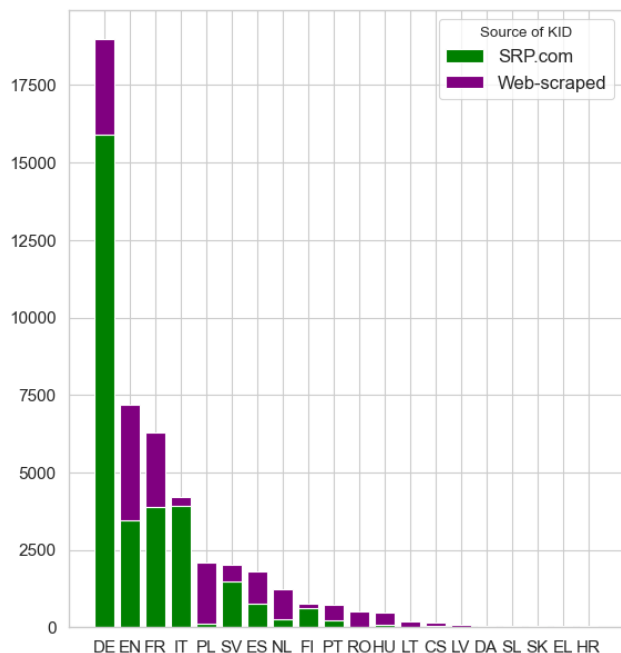
¹⁴⁶ In SRP.com’s the definition of flow products is “highly standardised structured products, usually issued in large numbers and on a regular basis”. Leverage products are defined in the following way: “Products that provide leverage long or leverage short position in an underlying, usually including a stop-loss feature. These products are typically known as turbos”. The remaining products are classified as “non-flow”.

¹⁴⁷ The KIDs downloaded from SRP do not include leverage products, but do include some derivatives (e.g. puts, calls). Since warrants and CFDs do not have specific categories it is not known whether these are included. Those that are not classified as “flow” or “leverage” products should be in the sample. Additionally, this categorisation is also not known for the KIDs that are scraped from the internet.

¹⁴⁸ Google’s search engine limits the number of queries returned per issuer. Directly accessing issuer websites in order to obtain all KIDs on those sites was deemed unfeasible due to the hundreds of issuers known to exist, each of which have their own website structure that must be understood in order for web scraping to take place. Web scraping is based on Google searches on the domain of each issuer, so it should not depend on the specific features of the websites, e.g. whether the links are displayed on the webpage or reachable via a search bar.

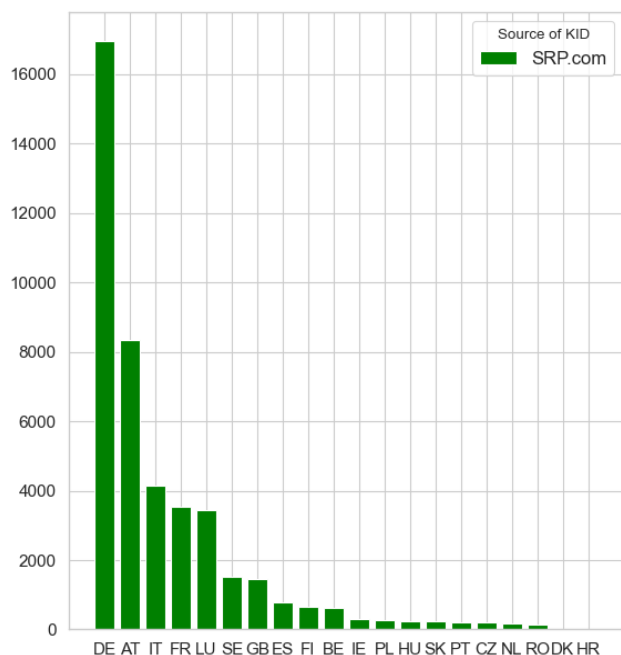
¹⁴⁹ Sometimes, multiple KIDs are issued for the same product in different languages. In such cases, preference was given to English-language documents, while the others were discarded to avoid double counting.

Figure 15
Sample of KIDs by language



Sources: ESMA, Structuredretailproducts.com, financial entities' websites.

Figure 16
Sample of KIDs by country of sale



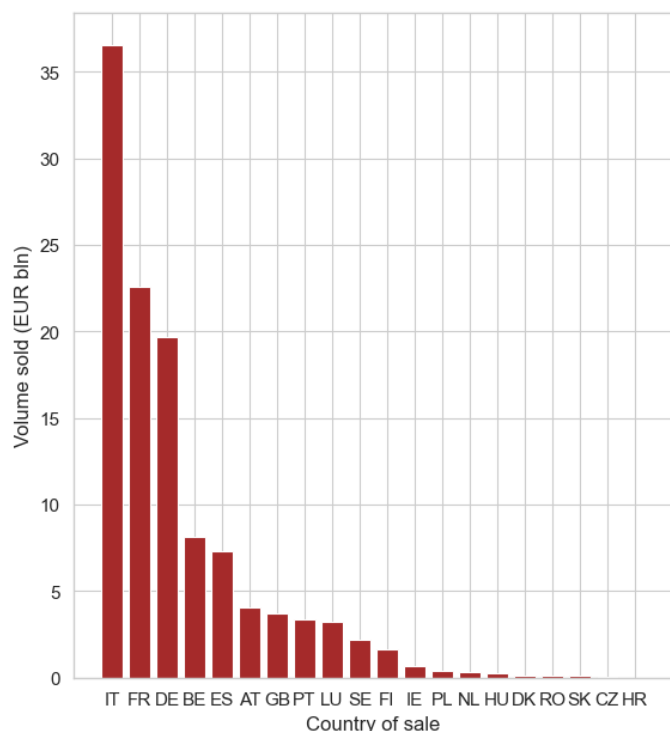
Note: Country of sale available only for KIDs downloaded from SRP.com. One KID can be associated to multiple countries.
Sources: ESMA, Structuredretailproducts.com.

The picture changes when looking at the actual size of the market, based on the volume of sales reported by SRP.com.¹⁵⁰ Chart Figure 17 shows that the biggest market where KIDs in the sample are

¹⁵⁰ Sales figures for some products are reported by SRP.com as estimates.

issued is Italy, followed by France, while Germany comes only in third place. The Belgian market also records considerable sales, with figures comparable to those of Spain.¹⁵¹

Figure 17
Sales volume by country



Note: Sample includes only KIDs downloaded from SRP.com.
Sources: ESMA, Structuredretailproducts.com.

Recent developments and trends on the market for PRIIPs and other retail investment products

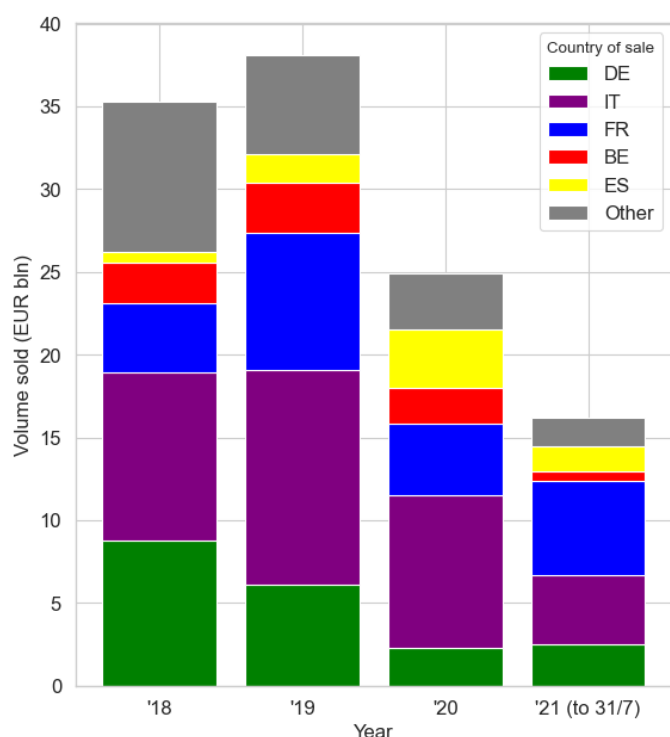
Sample of PRIIPs associated to a KID

To analyse potentially relevant trends in the market for PRIIPs, the sales figures in chart Figure 17 are presented broken down by year since 2018 (the first year after the PRIIPs Regulation was implemented).¹⁵² Chart Figure 18 shows that the sale of PRIIPs seems to have steadily declined in Germany. Sales in Italy and France gathered pace in 2019, before receding to 2018 levels during 2020. Overall, 2020 saw a 35% decrease in sales from 2019 (from 38.1 to 24.9 EUR billion) according to the sample. Figures for 2021 refer to the first seven months and suggest a possible pick up in sales that year.

¹⁵¹ It is worth noting that the number of additional web-scraped KIDs (for which sales volumes are not available) and their languages suggest that these sales figures might miss some relevant portion of the German-speaking, French-speaking and Polish markets especially (see chart Figure 15).

¹⁵² As reference date, we used the end of a product's subscription period.

Figure 18
Trend in sales by country¹⁵³



Note: Sample includes only KIDs downloaded from SRP.com.
Sources: ESMA, Structuredretailproducts.com.

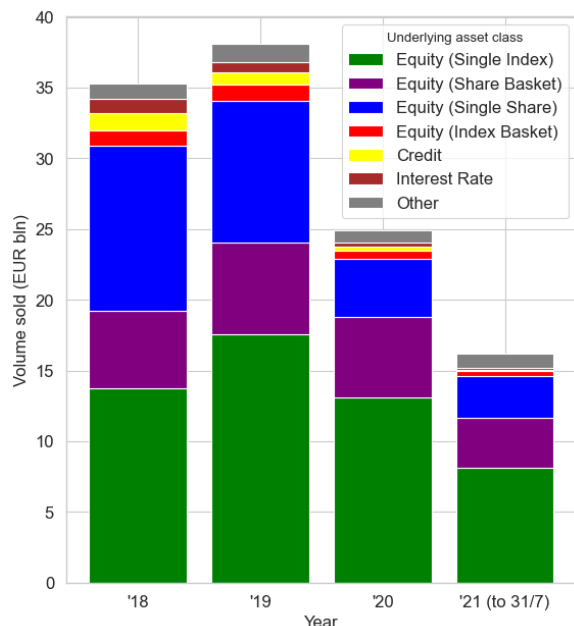
Chart Figure 19 provides a breakdown of the market by type of the underlying assets. Most of the market consists of products based on equity (over 90% of the sales), with a smaller share of products based on credit or interest rate. Among the different types of equity underlying, the lower sales in 2020 can be largely attributed to the products based on single shares, followed by those based on single indices, while sales of products based on a basket of shares roughly remained the same as in the previous years.

Sample of structured retail products

In order to widen the horizon from the sample of PRIIPs for which ESMA collected a KID to a broader scope including as many PRIIPs as possible, as well as other structured retail investment products, the analysis was complemented with sales figure provided in aggregate form (i.e., not obtained by ESMA aggregating granular figures over its KID database) by SRP.com. This can also allay potential concerns related to the representativeness and unbiasedness of ESMA's KID sample, by enabling a comparison between the descriptive statistics of this sample and those of the larger universe of structured retail products covered by SRP.com.

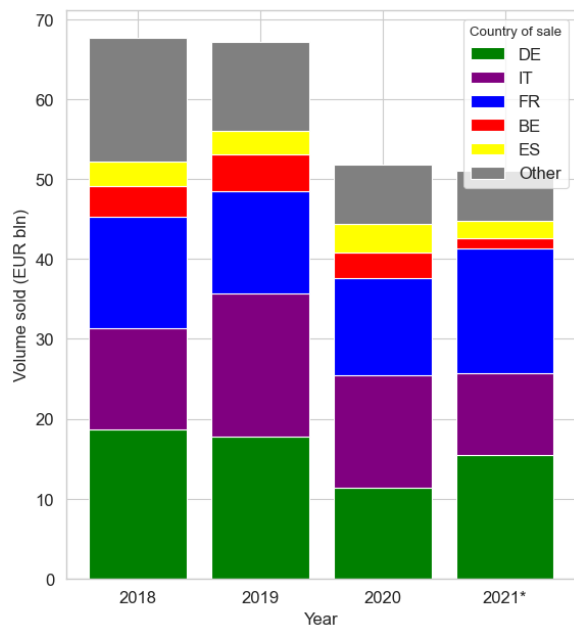
¹⁵³ Based on the data provided by CNMV (see Annex 6) the figures for 2018 and 2019 for Spain seem to be an underestimation.

Figure 19
Trend in sales by asset class



Note: Sample includes only KIDs downloaded from SRP.com.
Sources: ESMA, Structuredretailproducts.com.

Figure 20
Trend in sales of structured retail products by country



Note: Data collected by SRP.com for structured retail products of type "tranche" sold in the EU28. Products for which no KID was found are also included.

* Data collected for 2021 may still be subject to revision as new products are catalogued and sales figures updated.

Sources: Structuredretailproducts.com.

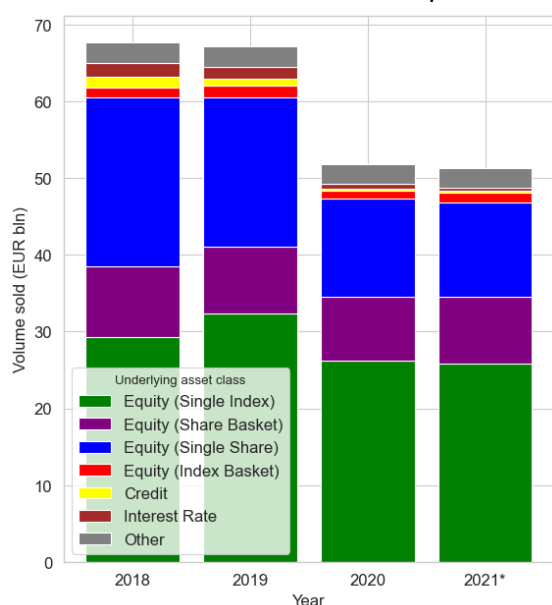
Chart Figure 20 displays the evolution of sales per year and by country of sale, similarly as in chart Figure 18. However, differently from chart Figure 18, the amounts shown refer to all structured retail products collected by SRP.com. Sales volumes according to this measurement are almost twice as

large as sales volumes collected for the previous sample.¹⁵⁴ Nevertheless, the two charts display a similar overall trend: in particular, in 2020 issuance fell, and thus maturing products have not been replaced by new ones.¹⁵⁵ One notable difference when considering the extended market data in chart Figure 20 is that German products are attributed a somewhat larger market share than it emerged from the sales amounts tied to KIDs in chart Figure 18, comparable to the share of Italy.

Chart Figure 21 presents a breakdown of the sales volumes by asset class of the underlying. The prevalence of equity-based products is evident, and the market shares of the distinct asset classes resemble those emerging from chart Figure 19.

Finally, chart Figure 22 shows the nominal value outstanding of structured retail products in the market. This also includes some products of type “continuous” - open-ended products with no fixed subscription period or maturity date - as well as other “tranche” products (i.e. product with a fixed subscription period) issued before the PRIIPs Regulation had entered into force. These data attribute a somewhat lower market share to the three main markets (Germany, Italy and France) combined, when compared to the share of yearly sales. Overall outstanding amounts have been slightly but steadily decreasing over the last few years.

Figure 21
Trend in sales of structured retail products by asset class



Note: Data collected by SRP.com for structured retail products of type “tranche” sold in the EU28. Products for which no KID was found are also included.

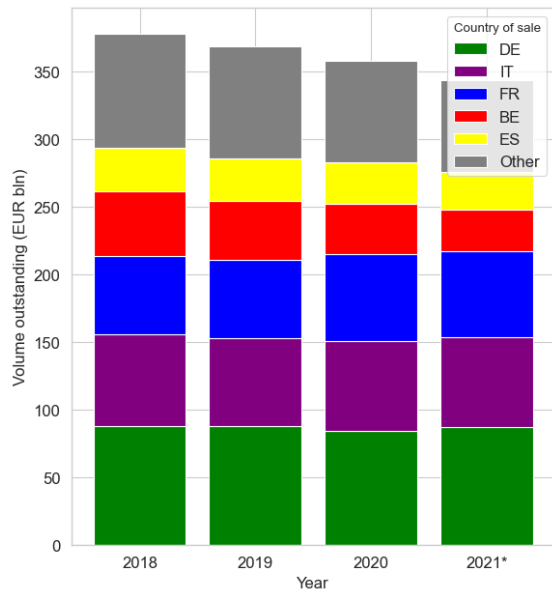
* Data collected for 2021 may still be subject to revision as new products are catalogued and sales figures updated.

Sources: Structuredretailproducts.com.

¹⁵⁴ Structured retail products are classified by SRP.com in one of three investment types: “flow”, described as “highly standardised structured products, usually issued in large numbers and on a regular basis”; “not flow”; and “leverage”, also known as turbos, which are also issued in very large numbers in some countries, such as Germany. Due to technical constraints, we could not query SRP.com’s database for KIDs of flow and leverage products (while we may have retrieved some of these via web-scraping). The additional sales volume in chart Figure 20 can therefore be attributed to both products for which a KID was available on SRP.com, but could not be added to our sample, and products for which a KID is not at all available on SRP.com.

¹⁵⁵ Although data for 2021 refer to the full year, it is likely that they are underestimated and that they will be adjusted upwards in the future as additional products are catalogued and sales figures are updated by SRP.com.

Figure 22
 Outstanding structured retail products by country



Note: Data collected by SRP.com for structured retail products outstanding in the EU28. Both “tranche” and “continuous” types are included. Products for which no KID was found are also included.

* Data collected for 2021 may still be subject to revision as new products are catalogued and sales figures updated.

Sources: Structuredretailproducts.com.

Annex 4 – Information collected previously by EBA on the cost and past performance of structured deposits

As explained in Section 3.1.1, the following summary is based on data and information relating to structured deposits as available in the ‘EBA Report on cost and past performance of structured deposits’ (the ‘Report’) published in 2019¹⁵⁶. The Report was drafted in response to the European Commission’s formal request to the three ESAs to issue, by the end of 2018, the first report on the cost and past performance of the main categories of retail investment products.

In respect of PRIIPs, structured deposits is the only product category that falls under the EBA’s consumer protection remit.

The availability of data on structured deposits from all EU markets (currently 27 EU markets, at the time of the publishing of the Report 28 EU markets) was difficult to obtain due to the specific characteristics of structured deposits. The Report analysed various sources of different kinds, including NCAs and alternative sources, public and private databases, and credit institutions.

With regards to NCAs, they generally seemed not to have quantitative information on the size of the market for structured deposits, nor on cost and past performance. The quantity and quality of the quantitative data provided by the 23 NCAs that provided input to the EBA was, in general, very limited, most likely, because of the fact that, in most cases, there were no compulsory reporting requirements. Only three NCAs (Spain, Hungary and Portugal) seemed to have accurate data of the market size. These three NCAs have put in place reporting requirements, with different levels of detail, to collect data on the market for structured deposits. In this regard, the EBA observed that Portugal has the most comprehensive data collection framework, based on which it issues an annual report with an analysis of the market for structured deposits, followed by Hungary, that collects data on outstanding amounts and interest rates, and Spain, which only collects outstanding amounts.

The type and detail of data reported was very heterogeneous, with some NCAs reporting data sales for 2017, others report outstanding volumes and/or number of products sold, and/or number of firms involved.

The results of the input request confirmed the general absence of quantitative data, which the broad majority of respondents explained by referring to the low level of importance of the market. In any case, quantitative data reported was consistent with the estimated low level of activity reported by respondents.

However, two NCAs (Luxembourg and Portugal) were in a position to provide data to the EBA, even though only for a small subset of structured deposits that matured between 1 January 2015 and 31 December 2017. This data is reproduced in the Table 1 below.

¹⁵⁶ [EBA BS 2018 XXX \(EBA report EC request SDs - Report\).docx \(europa.eu\)](#)

Table 1 – data for a subset of structured deposits in Luxembourg and Portugal that matured 1 January 2015 – 31 December 2017

NCA	Term (1)	Maturity	Underlying (2)	Past performance (3)	Cost
LU	1 month	20/02/2015	FX rate	3.50%	0.00%
LU	3 months	09/06/2017	FX rate	1.42%	0.00%
PT	3	26/08/2016	Interest rate indices	1.87%	n/a
PT	3	02/06/2017	Interest rate indices	1.80%	n/a
PT	1	24/09/2015	Shares	0.25%	n/a
PT	1	17/10/2016	Shares	0.15%	n/a
PT	1.5	27/11/2015	Shares	0.49%	n/a
PT	1.5	20/03/2017	Shares	0.23%	n/a
PT	1.5	21/04/2017	Shares	0.00%	n/a
PT	3	24/09/2015	Shares	2.23%	n/a
PT	3	04/02/2016	Shares	0.78%	n/a

- (1) In years, unless otherwise specified.
- (2) Indices of reference assets to whom the performance of the structured deposit is linked, these can include:
- Shares (including baskets of shares and indexes)
 - Fixed rate assets (including baskets of bonds and indexes)
 - Foreign exchange rate or combination of foreign exchange rates
 - Commodities (including baskets of commodities and indexes)
 - Interest rate indexes (please note that deposits are excluded if the return is directly linked to an interest rate index such as EURIBOR or LIBOR).
 - Others
- (3) Average of annual rate of return. This figure shall be calculated considering net performance as numerator and the initial investment amount of the price paid as denominator. The return should be calculated net of all applicable costs.

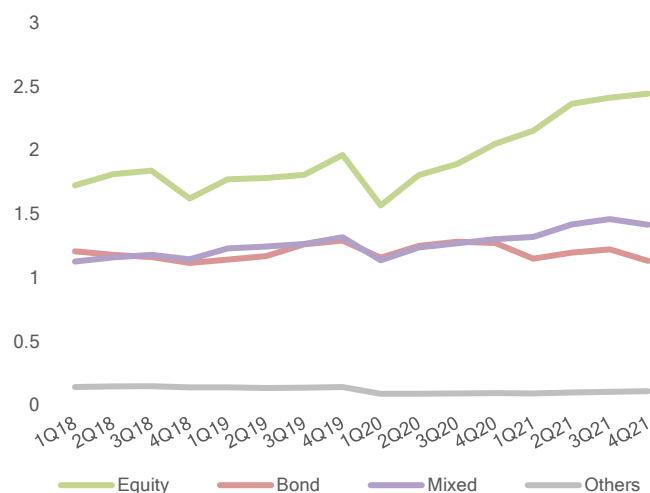
In terms of market size, with very few exceptions, NCAs were not able to provide exact quantitative data on the size of the market for structured deposits. The EBA did not identify other sources with accurate and comprehensive quantitative data of this market, although, as mentioned above, qualitative input gathered by the EBA from NCAs and data providers suggests that the market for structured deposits is relatively small.

Annex 5 – ESA analysis regarding other retail investment products

As explained in Section 3.1.1, the ESAs conducted analysis on the various types of retail investment products which are not, or not yet, PRIIPs. The outcome of this assessment is presented in this Annex, regarding UCITS, retail AIFs, and shares and other related products.

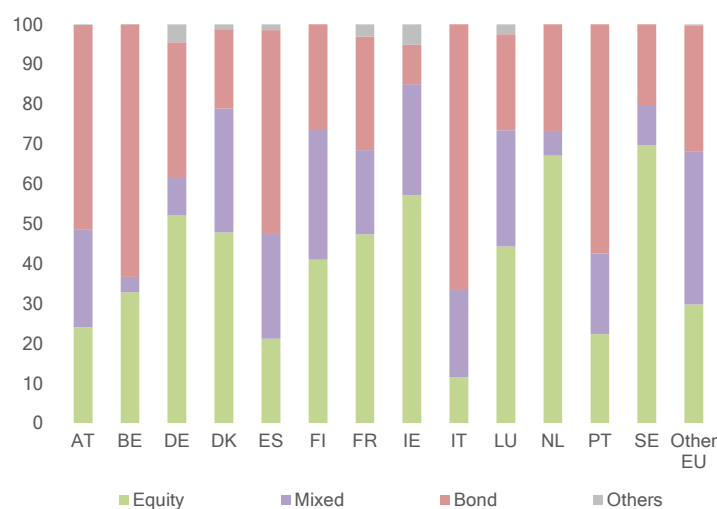
UCITS

Figure 23



Note: EU27 UCITS annual total net asset value reported at quarterly frequencies by asset class, retail investors, EUR trillion. Others includes UCITS following alternative strategies.
Sources: Refinitiv Lipper, ESMA.

Figure 24



Note: EU27 UCITS, share of total by asset class over total national fund value, per domicile, retail investors, end-2021, %. Others includes UCITS following alternative strategies.
Sources: Refinitiv Lipper, ESMA.

This stacked bar chart (figure 24) shows the share of different asset classes invested by retail investors in terms of the total national fund value for each national market in 2021. The Netherlands and Sweden have the highest percentage of national fund value invested in equity UCITS funds, as they

represent close to 70% of their total national fund value. These countries are followed by Ireland, Germany, Denmark, and France, where UCITS equity funds constitute 50% to 60% of the total national fund value. In contrast, in Italy UCITS equity funds account for only 10% of the total national fund value, while UCITS bond funds represent close to 70%. Other countries with a relatively high share of UCITS bond funds are Belgium, Portugal, Estonia and Austria. In these countries, 50% to 60% of the total fund value are invested in UCITS bond funds. Mixed funds seem to play a minor role in Belgium, Germany, the Netherlands and Sweden. In most other EU jurisdictions, they account for 20% to 40% of the total national fund value.

Figure 25

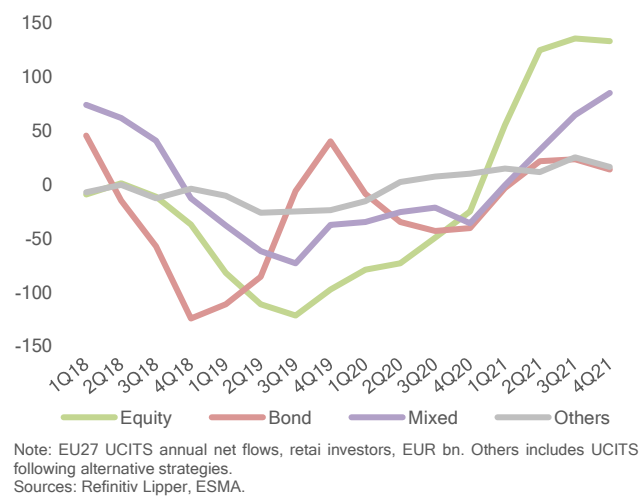
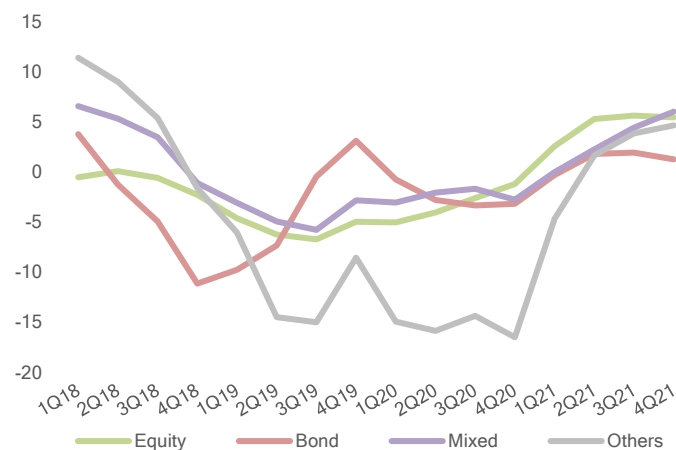


Figure 25 depicts the net flow evolution of different asset classes between 2018 and 2021, focusing on retail investors. While the investments of retail investors in UCITS equity funds decreased until the third quarter of 2019, investments in UCITS equity funds have drastically increased and stabilised at around EUR 135 billion net flows during 2021. The net flows of UCITS bond funds reached a low point in the fourth quarter of 2018 with close to EUR -125 billion. This development has been followed by a sharp increase up to EUR 40 billion in the fourth quarter of 2019. After another smaller decrease in 2020, the net flows of UCITS bonds funds stabilised around EUR 20 billion in 2021. Similar to the UCITS equity flows, mixed UCITS funds had decreasing net flows until the third quarter of 2019. Since the end of 2020, there has been a sharp increase in the net flows of mixed UCITS funds, reaching EUR 85 billion in the fourth quarter of 2021. The net flows of UCITS funds investing in other asset classes remained stable between 2018 and 2021.

Figure 26

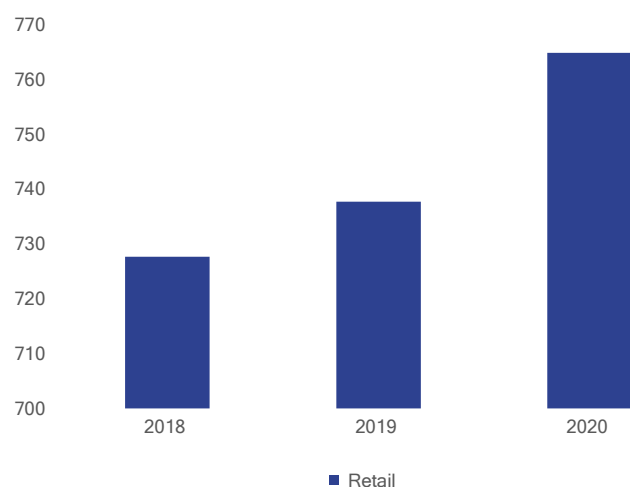


Note: EU27 UCITS annual net flows by asset class as % of total annual net asset value, retail investors. Others includes UCITS following alternative strategies.
Sources: Refinitiv Lipper, ESMA.

Figure 26 shows the net flows evolution of retail investors for different UCITS fund asset classes between 2018 and 2021 in relation to the total net asset value (NAV). In general, the share of annual net flows for equity and mixed funds are closely interlinked. Both asset classes reach a low point in the third quarter of 2019 with -5% to -7%. Since then, the percentages of UCITS equity and mixed funds have steadily increased up to 6% in the fourth quarter of 2021. The share of the total NAV for bond UCITS funds reached a low point in the fourth quarter of 2018 with -11%. This development has been followed by a sharp increase to 3% in the fourth quarter of 2019. After another smaller decrease in 2020, the share of the total NAV of mixed UCITS funds stabilised around 1-3%. The percentage of other UCITS asset classes sharply decreased until the second quarter of 2019. Subsequently, it remained at the level of about -15% until the end of 2020. Since then, the share of the total NAV for other UCITS asset classes has drastically increased up to 4%.

Retail AIFs

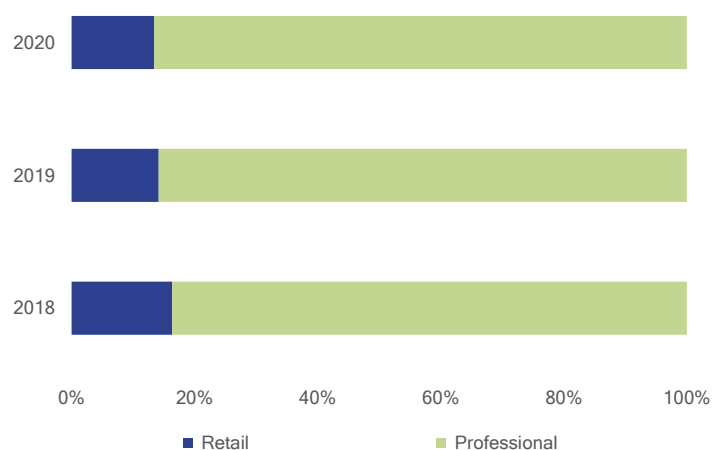
Figure 27



Note: NAV of retail clients of EEA30 AIFs managed and/or marketed by authorised AIFMs and sub-threshold managers registered only in national jurisdictions., EUR billion.
Sources: National Competent Authorities, ESMA

This bar chart (figure 27) depicts the NAV of retail AIFs for 2018, 2019 and 2020. The NAV of retail AIFs in the European Economic Area (EEA) has increased from EUR 727 billion in 2018 to EUR 764 billion in 2020.

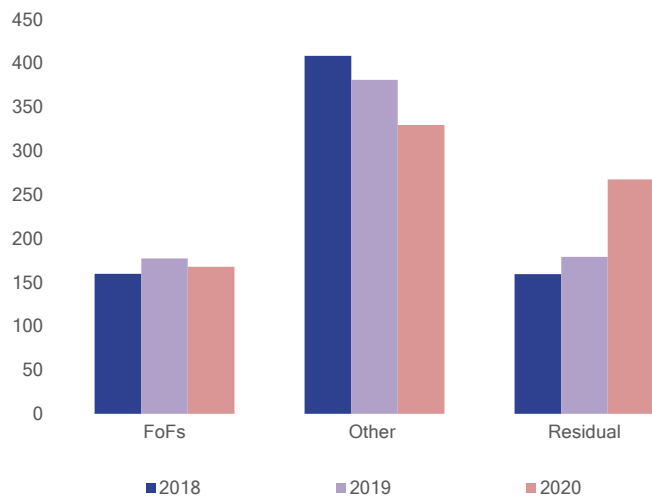
Figure 28



Note: Clients of EEA30 AIFs managed and/or marketed by authorised AIFMs and sub-threshold managers registered only in national jurisdictions, end of 2020, in % of NAV.
Sources: National Competent Authorities, ESMA

This horizontal bar chart (figure 28) shows the shares of retail and professional investors investing in AIFs between 2018 and 2020. Although the NAV of retail clients has increased, the relative share of retail AIFs' NAV has slightly decreased from 16% in 2018 to 13% in 2020. Correspondingly, the NAV of professional AIFs has increased at a higher rate than retail AIFs. In absolute terms, the NAV of professional AIFs has risen from EUR 3,719 billion in 2018 to EUR 4,928 billion in 2020.

Figure 29

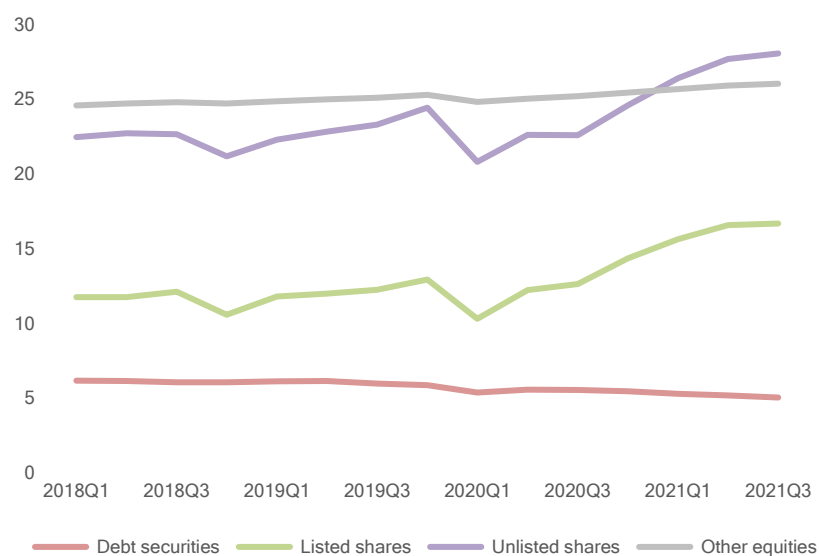


Note: NAV of retail clients of EEA30 AIFs managed and/or marketed by authorised AIFMs and sub-threshold managers registered only in national jurisdictions, by fund type., EUR billion. Residual includes: private equity, hedgefunds, rest of the market, EUR billion.
Sources: National Competent Authorities, ESMA

This bar chart (figure 29) depicts the NAV of retail clients investing in different AIF fund types between 2018 and 2020. While Fund of Funds (FoFs) AIFs remained largely stable with a NAV around EUR 165 billion during this period, the category of other AIFs has significantly decreased from EUR 408 billion in 2018 to 329 billion in 2020. Other AIFs cover a range of strategies, such as fixed income and equity strategies. In contrast, residual AIFs saw a sharp increase from EUR 159 billion in 2018 to EUR 267 billion in 2020. This AIF type includes, for instance, private equity and hedge funds.

Shares and related products

Figure 30



Note: : Households financial assets di in the EU, distinguishing in Debt securities, and equity (listed and unlisted shares, and other equity), EUR trillion.
Sources: Eurostat, ESMA.

Figure 30 shows the total financial assets of EU households distinguishing in debt securities¹⁵⁷, listed shares, unlisted shares and other equities. The amount invested in debt securities by EU households has slightly decreased from EUR 6.15 trillion in the first quarter of 2018 to EUR 5.03 trillion in the last quarter of 2021. The investments of EU households in listed and unlisted shares have significantly increased since the stressed market situation in the first quarter of 2020. Since then, listed shares have reached EUR 16 trillion, and unlisted shares have reached EUR 28 trillion in the fourth quarter of 2021. Other kinds of equities only experienced a slight increase from EUR 24 trillion in the first quarter of 2018 to EUR 26 trillion in the last quarter of 2021.

¹⁵⁷ Please note that this chart refers to Balance-of-Payments statistics from Eurostat. The Balance of Payments (BOP) considers all economic transactions between the residents and the non-residents of a country or of an economic area during a given period distinguishing by sector (in this case, Households). It provides information on international transactions which are part of the current account, capital and the financial account (what it is considered in this chart). As such BOP is a macro-economic indicator used to assess the position of an economy (of credit or debit for current and capital account, net acquisition of financial assets or net incurrence of liabilities for BOP financial account and international investment position) towards the external world. The definition of Debt Securities can be found in the [IMF manual](#), page 87.

Annex 6 - Data on PRIIPs and other retail investment products provided by NCAs

As explained in Section 3.1.1, the ESAs gathered relevant data from NCAs to complement the information that was available to the ESAs. The information is presented below in this Annex per Member State.

Austria

The FMA collects KIDs from the websites of Austrian banks as PRIIP manufacturers several times a year, retrieving between 7,000 and 10,000 KIDs each time (including newly issued KIDs as well as updates from previously issued KIDs). Since 2018, 24,381 distinct PRIIPs with ISINs¹⁵⁸ have been collected. The number of KIDs does not necessarily correspond to the numbers of products sold (within and outside Austria).

Data on volumes sold are not available for PRIIPs, but could be approximated by using alternative data sources. The FMA conducted some analysis using information from portfolio investments reporting from Austrian depository banks on the holdings of Austrian households (households is used as proxy for retail investors) on an ISIN basis¹⁵⁹. This reporting includes issuances from Austrian as well as non-Austrian issuers, so PRIIPs can be identified by ISINs collected from the FMA (only for Austrian issuers) as well as by product category¹⁶⁰. As of Q3 2021, the total amount of holdings from households sums up to 134.7 billion EUR for all issuers and 82 billion EUR for Austrian issuers. PRIIPs have a share of 8.5% when taking into account all issuers, and a share of 10.7% when looking only at Austrian issuers. In comparison, funds have a share of 58% (all issuers) and 82% for Austrian issuers only.

¹⁵⁸ Products without an ISIN, e.g. some derivatives, cannot be uniquely identified within the data set so they are exempted from the following analysis of data

¹⁵⁹ Instruments in this reporting include shares, bonds, funds, certificates and linked bonds.

¹⁶⁰ Product categories "linked bonds" and "certificates" are generally assumed to be PRIIPs.

Belgium

The following information in table 2 was provided on structured notes (public offering only) covering up to June 2021.

Table 2

Year	Number of products	Issued amount EUR
2018	215	1,756,812,064
2019	199	2,027,968,223
2020	147	1,372,943,785
2021	70	642,215,721
Total	631	5,799,939,793

Finland

In Finland *ex ante* notification of the KID applies, and all KIDs are stored in a database by the FIN-FSA. Since 2018 2.1 Million KIDs have been notified, a vast majority of them updates from previous KIDs. Over 1.8 Million of these KIDs lie in the highest risk class (SRI = 7); less than 50,000 show a SRI between 1 and 5. Numbers on volumes are not available.

France

The AMF does not have a consolidated view of the number and volume of PRIIPs sold to retail investors.

Nevertheless, the AMF shared estimations of the retail market shares in PRIIPs based on some recent market surveys. For example a survey, conducted by the Kantar institute in March 2021, describes the ownership rate of different fund-type products in the adult population of France as follows:

- Unit-linked Life insurance: 13 % representing EUR 458 billion
- Funds (direct investment): 5 % representing EUR 320 billion.

Other indirect indicators of retail participation in PRIIPs can be found in a 2021 AMF study¹⁶¹ identifying French funds marketed to retail through life insurance contracts.

The AMF also extracted data from MiFIR reporting between 1 January 2018 and 30 November 2021, in relation to locally-issued financial instruments or locally-domiciled investment service providers, i.e.:

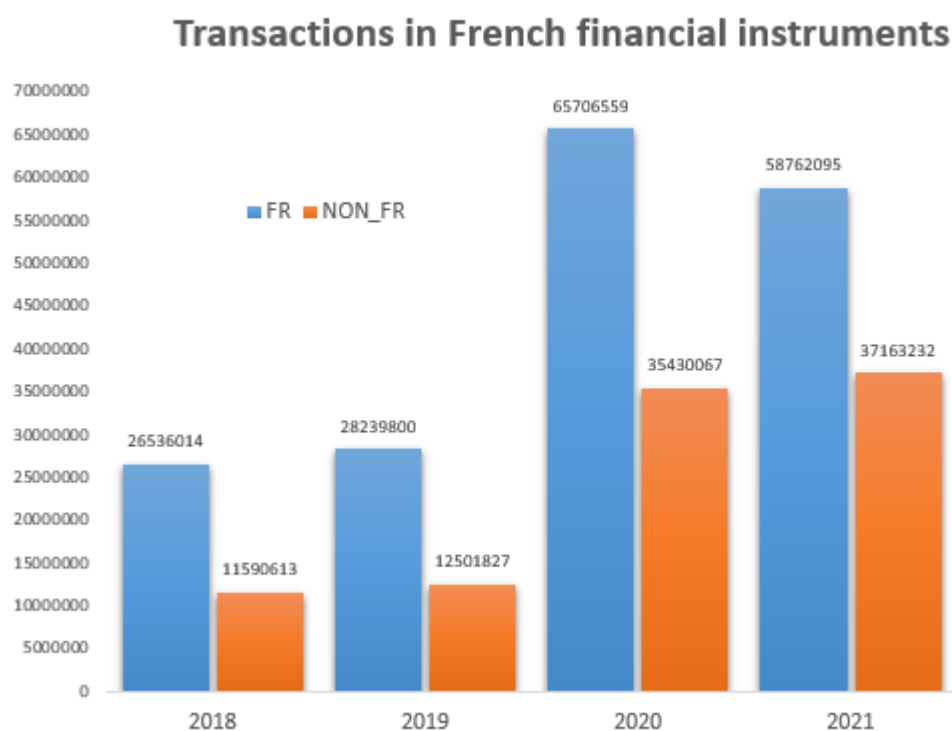
- Retail transactions in French financial instruments by French and non-French investors; and
- Retail transactions executed via French investment service providers by French and non-French investors.

For a complete picture of the French retail market share, for PRIIPs and non-PRIIPs instruments in the scope of MiFIR, this data would need to be complemented with that provided by other NCAs regarding French retail transactions in non-French financial instruments or via non-French service providers. This assessment was not conducted for other NCAs as explained in Section 3.1.1.

The AMF data from MiFIR reporting is shown in the graphs and tables (figures 31 and 32) below. It is presented in terms of the number of transactions rather than amounts, due to the diverse nature of the instruments in scope, which makes the notion of “amounts” reliant on methodological assumptions. As a result, these figures are not immediately comparable to the local retail market share for French MOPs or funds stated above (EUR 458 billion and EUR 320 billion respectively). However there could be partial overlap with the data reported for funds since “OPC hors ETF” in the graph refers to direct transactions in funds. Results are presented for the following types of transactions: ‘Actions et droits’ (i.e. equities), ‘ETF’ (exchange traded funds), ‘Derives OTC Equity’ (i.e. equity OTC derivatives), ‘Debt’, ‘Certificats et Warrants’ (i.e. certificates and warrants), ‘Fut et options listees’ (i.e. listed futures and options), ‘OPC hors ETF’ (i.e. funds excluding ETF), ‘Commo’ (i.e. commodities), ‘Mixed/other’, ‘Change’ (i.e. FX), ‘Rates’, and ‘Credit’. The vast majority of transactions identified (excluding transactions in standard funds and MOPs, which would not be reported under MiFIR) are in relation to equity securities, which will generally not be deemed PRIIPs. The second largest are ETFs, which are essentially fund-like instruments, with specific trading characteristics. These are generally UCITS which are currently exempted from the obligation to produce a KID.

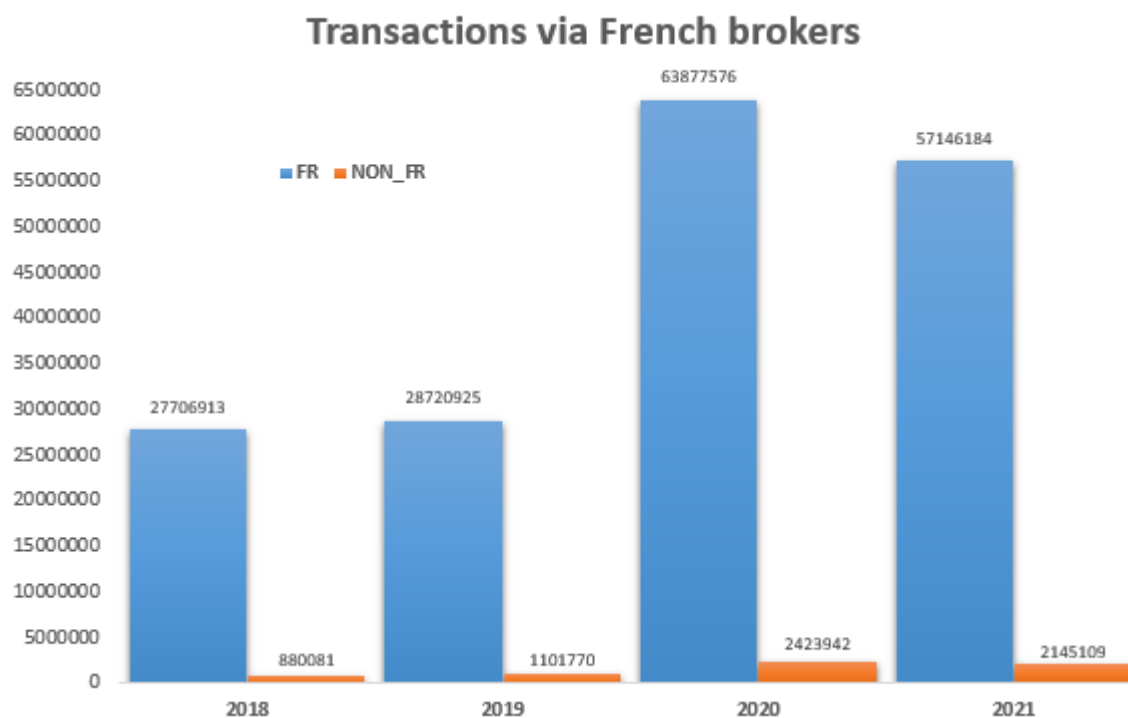
¹⁶¹ <https://www.amf-france.org/en/news-publications/publications/reports-research-and-analysis/identification-funds-marketed-through-life-insurance-or-used-insurers-investment-vehicles-new-data>

Figure 31 - Transactions in French financial instruments



Retail_is_FR	CfiClass	2018	2019	2020	2021	Grand total
False	Actions et droits	6 000 171	6 068 844	19 103 848	19 043 706	50 216 569
	ETF	1 909 326	2 524 498	7 898 468	11 382 603	23 714 895
	Derives OTC Equity	1 558 414	1 912 367	4 800 530	2 557 490	10 828 801
	Debt	928 990	1 012 196	1 559 631	1 148 230	4 649 047
	Certificats et Warrants	379 041	378 914	1 465 408	2 103 165	4 326 528
	Fut et options listees	251 131	254 125	328 887	601 844	1 435 987
	OPC hors ETF	233 248	208 657	225 653	230 900	898 458
	Commo	106 977	135 331	43 537	39 331	325 176
	Mixed / Other	215 744	2 788	1 185	52 720	272 437
	Change	3 892	1 025	1 133	2 490	8 540
	Rates	2 924	1 006	1 722	723	6 375
	(Empty)	286	2 006	4	7	2 303
	Credit	469	70	61	23	623
	Subtotal	11 590 613	12 501 827	35 430 067	37 163 232	96 685 739
	True	Actions et droits	21 804 684	23 687 966	57 947 434	52 601 614
Certificats et Warrants		1 738 810	1 701 573	2 548 428	2 251 247	8 240 058
Derives OTC Equity		1 313 503	1 243 414	2 356 064	1 299 145	6 212 126
ETF		873 314	993 752	2 240 972	1 889 133	5 997 171
Fut et options listees		371 273	331 498	343 047	462 939	1 508 757
Debt		251 398	234 868	246 999	164 495	897 760
Mixed / Other		131 187	1 122	42	42 620	174 971
Commo		16 593	11 295	22 087	49 714	99 689
Change		25 464	20 912	471	190	47 037
OPC hors ETF		7 275	4 387	626	680	12 968
(Empty)		501	6 881	-	226	7 608
Rates		1 061	1 635	351	88	3 135
Credit		951	497	38	4	1 490
Subtotal		26 536 014	28 239 800	65 706 559	58 762 095	179 244 468
Grand total		38 126 627	40 741 627	101 136 626	95 925 327	275 930 207

Figure 32 - Transactions via French brokers



Retail_is_FR	CfiClass	2018	2019	2020	2021	Grand total
False	Actions et droits	771 060	895 439	2 062 046	1 752 192	5 480 737
	ETF	24 721	76 902	155 968	89 252	346 843
	Certificats et Warrants	53 115	69 295	111 913	81 566	315 889
	Fut et options listees	14 292	25 965	25 640	164 421	230 318
	Derives OTC Equity	4 288	17 069	49 732	27 879	98 968
	Debt	9 475	12 061	11 920	7 327	40 783
	OPC hors ETF	2 594	4 358	4 648	8 261	19 861
	Commo	140	378	1 894	13 878	16 290
	Change	190	150	161	305	806
	(Empty)	60	141	-	2	203
	Mixed / Other	101	-	-	-	101
	Credit	45	12	20	8	85
	Rates	-	-	-	18	18
	Subtotal	880 081	1 101 770	2 423 942	2 145 109	6 550 902
True	Actions et droits	23 156 408	24 500 907	57 319 450	51 565 789	156 542 554
	Certificats et Warrants	1 688 963	1 598 099	2 407 019	2 266 647	7 960 728
	ETF	1 098 510	1 148 782	2 324 124	1 973 246	6 544 662
	Derives OTC Equity	1 013 665	887 599	1 222 321	556 022	3 679 607
	Fut et options listees	267 335	258 339	269 839	336 082	1 131 595
	Debt	295 765	283 723	289 003	191 114	1 059 605
	OPC hors ETF	36 277	19 275	22 652	228 065	306 269
	Mixed / Other	131 182	1 110	2	5	132 299
	Commo	12 385	8 709	21 385	27 895	70 374
	Change	4 078	5 281	1 567	1 070	11 996
	(Empty)	585	7 016	-	226	7 827
	Rates	811	1 591	183	19	2 604
	Credit	949	494	31	4	1 478
	Subtotal	27 706 913	28 720 925	63 877 576	57 146 184	177 451 598
Grand total	28 586 994	29 822 695	66 301 518	59 291 293	184 002 500	

Hungary

The Central Bank of Hungary collects data from investment firms and credit institutions providing investment services on volume. Data for on-exchange and off-exchange (OTC) PRIIP volumes for retail investors are available for structured products except structured bonds as shown in Table 3-5 below. The number of transactions or number of individual PRIIPs sold is not available.

Table 3 – Average exchange rate

Average exchange rate (HUF / EUR)	2018	2019	2020	2021YTD
	318.87	325.25	351.17	357.6

Table 4 – exchange traded instruments

On exchange/EUR	2018	2019	2020	2021YTD
Futures	7,117,755,772	6,796,209,470	8,110,992,098	7,109,793,795
<i>FX</i>	5,100,501,007	5,068,025,496	4,550,587,681	4,881,829,849
<i>Interest rate</i>	-	1,753,000	-	-
<i>Shares</i>	1,092,606,648	788,594,207	764,839,599	460,601,063
<i>Indices</i>	831,223,396	861,047,181	2,618,039,211	1,344,195,423
<i>Commodities</i>	93,424,722	75,397,256	160,741,253	360,599,200
<i>Other</i>	-	1,392,329	16,784,354	62,568,260
Options	117,827,147	114,540,715	127,943,354	93,607,172
<i>FX</i>	80,019,184	55,791,436	14,836,094	1,472,315
<i>Interest rate</i>	-	-	-	-
<i>Shares</i>	37,807,962	58,749,279	111,915,818	92,134,857
<i>Indices</i>	-	-	1,191,442	-
<i>Commodities</i>	-	-	-	-
<i>Other</i>	-	-	-	-
Certificates/warrants	390,905,686	259,206,490	435,380,209	287,062,950
Investment funds	103,210,100	79,553,572	149,793,093	167,628,435

Table 5 – OTC instruments

OTC/EUR	2018	2019	2020	2021YTD
Futures	4,766,297,268	4,889,067,952	7,325,693,034	7,757,588,480
<i>FX</i>	4,505,887,950	4,454,535,750	6,921,031,557	7,321,022,695
<i>Shares</i>	-	-	-	-
<i>Government bonds</i>	71,735,097	182,693,900	253,083,471	311,763,024
<i>Other securities</i>	-	-	3,913,712	4,091,704
<i>Interest rate</i>	-	-	-	-
<i>Indices</i>	38,898	84,754	67,613	21,201
<i>Other</i>	188,635,323	251,753,548	147,596,681	120,689,856
Options	2,148,546,210	2,081,485,575	870,225,218	701,288,047
<i>FX</i>	2,148,546,210	2,081,485,575	870,225,218	701,288,047
<i>Shares</i>	-	-	-	-
<i>Government bonds</i>	-	-	-	-
<i>Other securities</i>	-	-	-	-
<i>Interest rate</i>	-	-	-	-
<i>Indices</i>	-	-	-	-
<i>Other</i>	-	-	-	-
Swaps	9,222,017,595	7,973,251,982	8,469,060,402	7,816,899,431
<i>Interest rate</i>	-	-	-	-
<i>FX</i>	9,222,017,595	7,973,251,982	8,469,060,402	7,816,899,431
<i>Currency</i>	-	-	-	-
<i>Other</i>	-	-	-	-
Other derivatives	17,885,261,358	5,972,744,595	7,212,285,410	5,100,487,259
<i>FX</i>	611,808,309	192,616,910	335,972,087	240,179,849
<i>Shares</i>	3,026,962,472	195,024,548	106,166,523	46,184,268
<i>Government bonds</i>	-	-	-	-
<i>Other securities</i>	3,917,245,600	2,586,420,066	3,741,737,491	3,731,841,009
<i>Interest rate</i>	-	-	-	-
<i>Indices</i>	10,272,255,346	2,821,351,518	2,955,182,217	1,063,979,139
<i>Other</i>	56,989,631	177,331,551	73,227,093	18,302,995
Certificates/warrants	38,121,773	19,682,937	16,767,775	29,636,633
Investment funds	12,801,954,811	12,392,376,661	11,380,622,706	10,989,602,289

Italy

Consob reported volumes of investment certificate (collected from trade associations¹⁶²) with around 11 billion EUR in 2020.

Table 6 below shows the number of KIDs (“first version” rather than updates) notified to Consob. The PRIIPs composition (incidence of each type of product on the total notifications) remained roughly constant during the three years considered, starting from 2018 until 2021.

Table 6 – number of KIDs

Category	sub-category ¹⁶³	2018	2019	2020	1 st half 2021
SECURITIES		22,842	15,794	26,545	7,208
	Leverage/Trading Certificates	8,000	5,468	13,332	3,845
	Investment Certificates		4,216	5,054	1,345
	Covered warrant/ Warrant	12,263	6,013	8,068	1,998
	Exchange traded products	2,513	4	17	3
	Bonds		93	74	17
IBIPs		1,909	1,501	1,469	373
DERIVATIVES		2,169	986	618	145
	Forward	n.a.	692	476	91
	Futures	n.a.	29	56	8
	Options	n.a.	80	39	7
	CFDs	149	95	19	21
	Swap	n.a.	90	28	18
CIS		153	80	123	27
TOTAL		27,073	18,361	28,755	7,753

The principal types of PRIIPs produced or distributed are as follows:

- Securities are the most relevant type of product, and sum up to more than 90% of the total notifications (about 26,500 KIDs in 2020);
- IBIPs cover about 5% of the total (about 1,400 KIDs in 2020¹⁶⁴);
- Derivatives cover about 2% of the total (about 618 KIDs in 2020);
- Collective Investment Schemes (CIS) and deposits (that are PRIIPs) represent a residual category.

¹⁶² ACEPI: Associazione Italiana Certificati e Prodotti di Investimento (Italian Association of Certificates and Investment Products). Data Source: Quarterly report on primary market Q-2021.

¹⁶³ It should be noted that for 2018 information is not available for all sub-categories separately. For example, within derivatives, only separately for CFDs.

¹⁶⁴ Please note that the number of “Start” notifications, i.e. first KIDs before a product is marketed referring to IBIPs does not necessary reflect the number of new products issued in the reference period: many IBIP manufacturers draft MOPs KIDs according to the approach under Article 10(a) of Delegated Regulation 2017/653 (“Stand alone” KIDs). In such cases, the notifications received by Consob are recorded for the different investment options of the product separately (e.g. from one new IBIP with 100 investment options, this means 100 notifications to Consob).

Luxembourg

CSSF collected data for PRIIPs in a questionnaire covering the time period 01/2018 to 06/2019 to credit institutions as well as investment firms incorporated under Luxembourg law. The data retrieved from the answers to the questionnaire are shown below.

During the Reference Period 11,515 different PRIIPs were manufactured by these companies. In the vast majority of the cases the PRIIPs manufactured were also sold or advised by these companies.

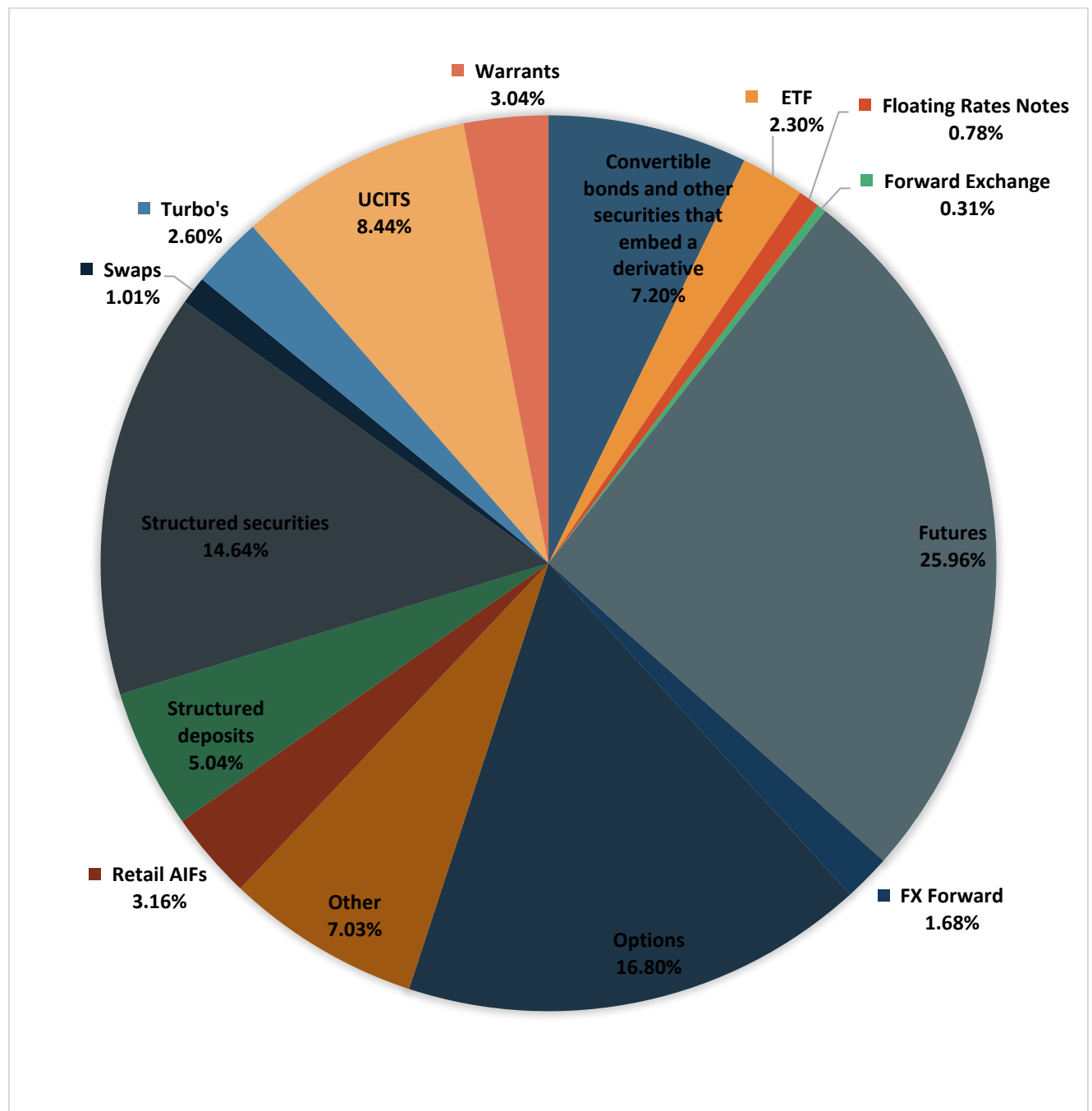
During the reference period, the following PRIIPs in the table below were advised or sold by these companies.

Table 6 – Number and type of PRIIPs

<u>Type of PRIIPs</u>	<u>Numbers</u>
Convertible bonds and other securities that embed a derivative	2543
ETF	813
Floating Rates Notes	277
Forward Exchange	111
Futures	9166
FX Forward	595
Options	5931
Other (this includes in the majority of the cases different types of investment funds)	2484
Retail AIFs	1117
Structured deposits	1779
Structured securities	5171
Swaps	358
Turbos	917
UCITS (it is important to know that some entities reported the number of UCITS and others did not because of the exemption in the PRIIPs Regulation)	2979
Warrants	1073
TOTAL	35314

During the reference period, the graph below (figure 33) shows the market share per type of PRIIPs distributed during the reference period by these companies.

Figure 33 – PRIIP market shares



Portugal

Banco de Portugal reported information on structured deposits. They explained that the market has been shrinking, with a steady decline of the amount outstanding since 2016, as shown in Table 7 below, based on data that has to be reported to the Banco de Portugal by all banks selling structured deposits.

Table 7 - Structured Deposits – Market evolution since 2015

Year	Number of deposits sold	Amount sold (10 ⁶ EUR)	Total amount outstanding at year end (10 ⁶ EUR)
2015	231	5.508,6	10.402,3
2016	179	3.143,5	8.865,7
2017	137	1.997,6	7.432,3
2018	81	1.731,3	5.468,5
2019	73	783,3	2.789,5
2020	51	250,4	742,4

Source: Banco de Portugal's Market Monitoring Report, 2020
(<https://clientebancario.bportugal.pt>)

CMVM reported information on PRIIPs (besides structured deposits) as shown in Table 8 below.

Table 8 – Number and market shares of certain types of PRIIPs

Year	Type of PRIIP		N° of PRIIPs issued
	Notes & Certificates	Platforms (CFDs, Forex, Futures, Options)	
2018	350 997 298,00 €	35 153 689 495,00 €	171
2019	1 291 952 883,00 €	110 139 994 930,00 €	178
2020	607 602 727,00 €	81 278 585 838,00 €	99
2021	620 628 052,00 €	48 566 939 799,00 €	90

- In "Notes & Certificates", the exchange rate considered was of 11/30/2021.
- In 2021 and in relation to "Platforms", considering that the reporting of information on the distribution of PRIIPs only takes place each semester, the values considered above for 2021 refer to the 1st semester of the year (i.e. first half).
- The values for Platforms, are the notional value and not the investment (*margin*).

Spain

CNMV provided data on financial instruments covered by MiFID II between 2018 and 2020, and data on structured deposits from 2019.

This includes annual data on the number and volume of instruments sold to retail investors by companies providing investment services in Spain. A separation is made between derivatives and non-derivatives since the volume figures are not comparable due to the different way the volumes are measured (effective amount vs nominal amount).

Table 9 – Number and volume of non-derivative instruments

Data in million €	Number of PRIIPs			Volume (effective amount)				
	2018	2019	2020	2018	2019	2020	Total 2018-2020	Market share
NON DERIVATIVES								
CIS (UCITS+AIFS)	72.847	73.348	82.974	181.980	170.386	171.328	523.693	77%
Structured debt	3.307	3.041	2.528	4.620	4.615	3.588	12.823	2%
Structured deposits	0	217	77	0	2.714	1.582	4.296	1%
Other PRIIPs (convertible bonds)(*)	254	246	210	100	63	67	230	0%
Other instruments (Not PRIIPs)	76.558	72.193	95.945	43.793	33.822	57.191	134.806	20%
Subtotal non derivatives	152.966	149.045	181.734	230.493	211.600	233.755	675.848	100%

(*) It is assumed for these purposes that debt instruments are not PRIIPs except convertible bonds. More precise classification would need a case-by-case analysis.

Table 10 – Number and volume of derivative instruments

DERIVATIVES	Number of PRIIPs			Volume (nominal amount)				
	2018	2019	2020	2018	2019	2020	Total 2018-2020	Market share
CFD	23.014	18.282	12.123	339.648	76.970	114.565	531.183	57%
Warrants and securitised derivatives	15.347	13.968	15.789	4.025	4.168	5.409	13.602	1%
ETD (exchange traded derivatives)	41.695	41.803	49.874	108.425	98.650	95.847	302.921	33%
OTC derivatives	5.908	15.660	9.579	23.429	28.456	31.700	83.584	9%
Subtotal derivatives	85.964	89.713	87.365	475.526	208.243	247.521	931.291	100%

Annex 7 - Analysis of use of the comprehension alert in a sample of KIDs

As explained in Section 3.2, the ESAs conducted an analysis of the use of the comprehension alert in the sample of KIDs collected by ESMA (see Annex 3).

The ESAs searched for the comprehension alert in KIDs in its different formulations across languages.¹⁶⁵ The comprehension alert was found in 74% of IBIPs and in 94% of PRIIPs. This is consistent with expectations based on the exemptions set out in the PRIIPs Regulation. However, among PRIIPs, the comprehension alert was found in 85% of funds vs. 98% of other PRIIPs.¹⁶⁶ This is potentially an indicator of non-compliance, as basically all non-UCITS funds are deemed complex under MiFID II.¹⁶⁷

Focusing on PRIIPs which are neither IBIPs nor funds, the ESAs investigated whether there is a specific subset of products to which the 2% of KIDs without a comprehension alert can be traced back. The charts in figures 33 and 34 provide a breakdown by underlying asset type and by payoff type, respectively. There is no clear association between the complexity of the product and the presence of the comprehension alert. Chart figure 35 further divides KIDs by language. Relevant language groups where a non-negligible number of KIDs without a comprehension alert was found are Spanish, Polish, and English, with percentages starting from 94%.

Finally, chart figure 36 shows a breakdown by language for funds. The main driver of the lower presence – 85% of documents – of the comprehension alert in this sample are documents drafted in English (only 49% include the alert, English KIDs being approximately one quarter of the overall sample, i.e. 998 out of 4167). The majority of these funds seem to be listed in non-EU jurisdictions.¹⁶⁸

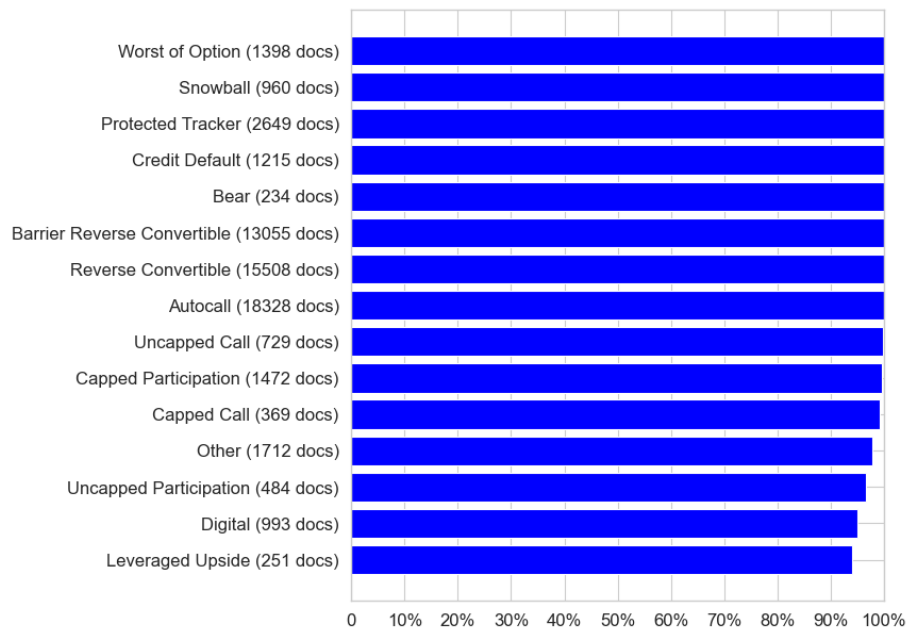
¹⁶⁵ The English version of the comprehension alert reads: “You are about to purchase a product that is not simple and may be difficult to understand”. Several minor variations were allowed in the search, e.g. “The investor is about (...)”, “(...) a product that is complex and may be (...)”, “(...) a product with complex features that may be (...)”.

¹⁶⁶ The 85% figure was calculated on a subset of 4,167 funds with an ISIN. The percentage of presence of the comprehension alert for funds without an ISIN after dropping IBIPs (3,799 products) was only 65%. However, we found some IBIPs, which could not be classified as such due to an incomplete identification of the performance scenarios when processing the KID, in the latter sample. Therefore, we believe that funds with an ISIN provide a more reliable picture.

¹⁶⁷ Article 1 of the PRIIPs Delegated Regulation establishes an exemption from the obligation to include a comprehension alert only for those PRIIPs which fall under points (i)-(vi) of Article 25(4)(a) of Directive 2014/65/EU of the European Parliament and of the Council.

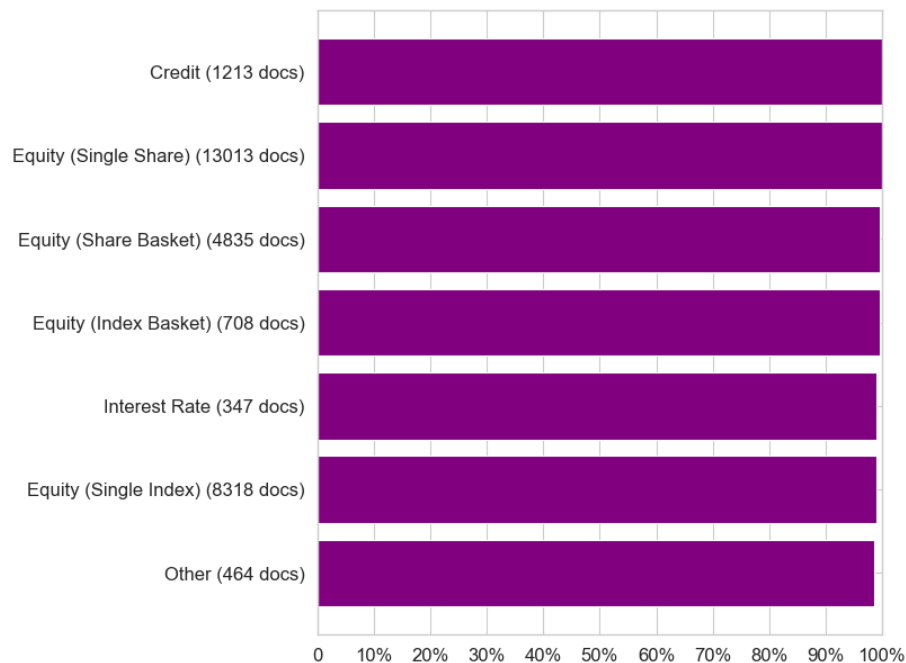
¹⁶⁸ The first two letters of the ISIN of the 504 English-language KIDs without a comprehension alert are: GB (256 funds), IE (74), XS (60), GG (37), CH (29), JE (18), LU (12), GS (6), BM (6), CZ (2), VG, NL, IM and CA (1 each).

Figure 33
Presence of comprehension alert by payoff type



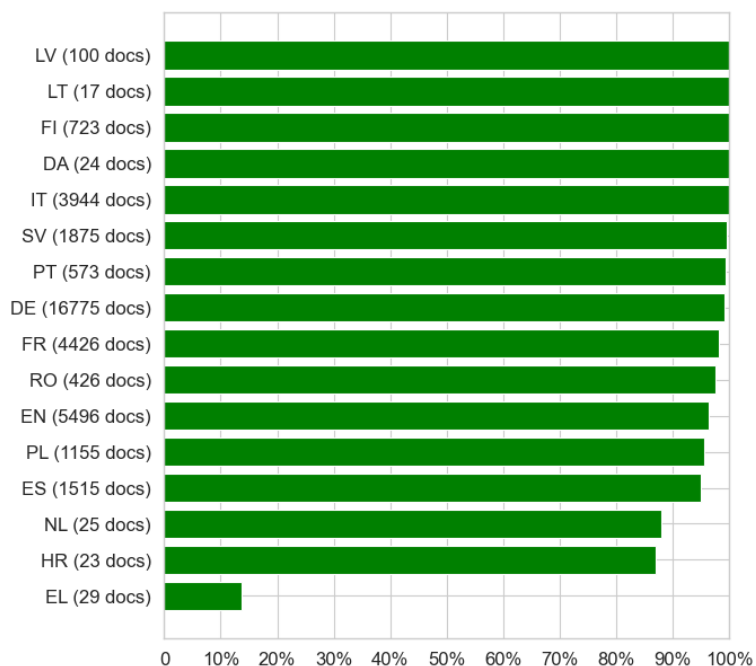
Note: Sample includes only KIDs downloaded from SRP.com, excluding products identified as funds or IBIPs.
Sources: ESMA, Structuredretailproducts.com, financial entities' websites.

Figure 34
Presence of comprehension alert by underlying asset



Note: Sample includes only KIDs downloaded from SRP.com, excluding products identified as funds or IBIPs.
Sources: ESMA, Structuredretailproducts.com, financial entities' websites.

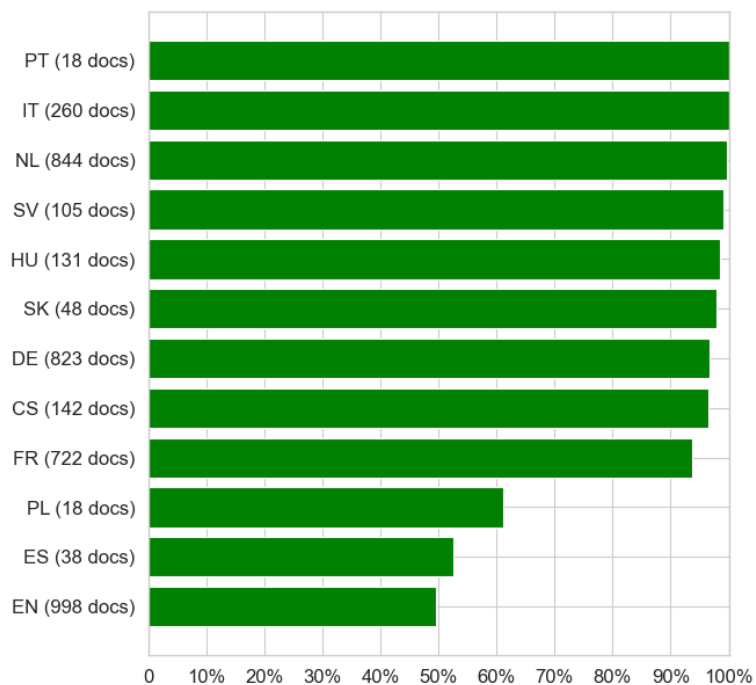
Figure 35
Presence of comprehension alert by language



Note: Sample includes PRIIPs which are not funds and which have not been identified as IBIPs. Languages with at least 3 documents are shown.

Sources: ESMA, Structuredretailproducts.com, financial entities' websites.

Figure 36
Presence of comprehension alert by language in funds



Note: Sample includes PRIIPs which are not funds and which have not been identified as IBIPs. Languages with at least 3 documents are shown.

Sources: ESMA, Structuredretailproducts.com, financial entities' websites.

Annex 8 – Automated checks on consistency issues for a sample of KIDs

As explained in Section 3.3.2, the ESAs conducted some automated checks on the same sample of KIDs (see Annex 3), which can provide an indication of the extent to which there are consistency issues. This concerns the presentation of costs and the use of the required narrative phrases in the KID.

Presentation of costs

One aspect relating to the consistent application of the PRIIPs Regulation is the correct calculation of costs and their inclusion within two tables in the KID. The first cost table in the KID displays the total cost that the retail investor can expect to pay every year based on a given investment amount over different time horizons, one of which is the recommended holding period. The same costs are also expressed in percentage terms, as a reduction in yield (RIY). The second cost table currently (until the revised PRIIPs Delegated Regulation is applicable), provides a breakdown of this RIY in subcomponents, expressed as costs to be born annually over the duration of the recommended holding period.

According to the methodology set out in the PRIIPs Delegated Regulation, the sum of these components should yield the RIY displayed in the first table for the recommended holding period. The ESAs extracted the cost figures from the KIDs¹⁶⁹ and checked whether this correspondence holds; that is, the ESAs compared the sum of the RIY components and the total RIY at the recommended holding period.

Chart Figure 37 shows the share of KIDs where these figures coincide¹⁷⁰ (green bar), where the cost components exceed the total RIY (purple bar), and where the cost components fall short of accounting for the total RIY (blue bar). The share of inconsistent KIDs is material, around 8% of the whole sample, but reaches remarkable levels especially for funds, at 25% of the products analysed. In the majority of these cases, the total cost indicator is lower than the sum of the listed cost items, rather than the other way around.

Such a mismatch may arise under different circumstances. On the one hand, some issuers may present a summary cost figure which actually underestimates the real costs of the product which emerges when these fees are spelled out separately. The mismatch may be due to errors in the calculation of the cost components themselves, with the headline total cost instead being estimated correctly. As a probable example of the latter circumstance, we have noticed some cases of funds including very large figures for performance fees (e.g. 20-25%), which suggests that some issuers do not correctly apply the methodology for the calculation of these fees in RIY terms in Table 2.

Chart figure 38 presents the same figures, while breaking down the sample in IBIPs vs. other PRIIPs. The rate of inconsistencies in the cost tables is slightly higher for IBIPs compared to other PRIIPs (approximately 11.5% and 7.5%, respectively).

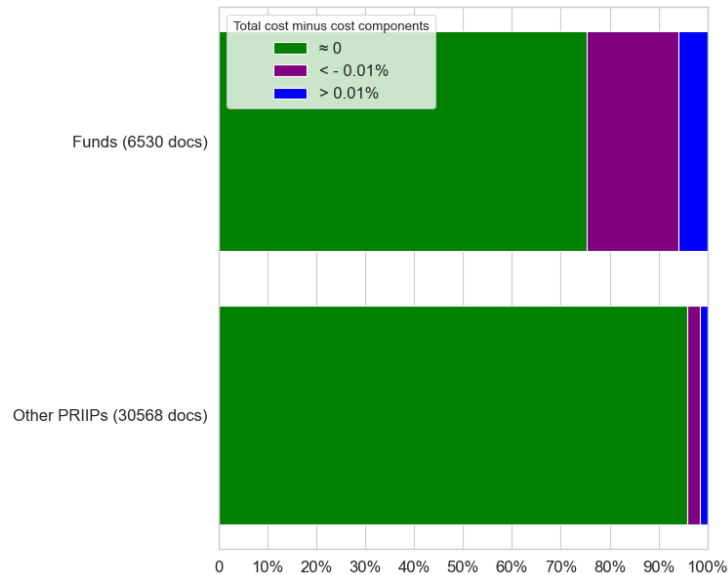
Finally, chart figure 39 – based on the SRP.com sample only – provides a breakdown by sales amount. Since many funds and IBIPs drop out from this sample, the percentage of KIDs where no issue was identified is generally higher. Nevertheless, it is possible to see that inconsistencies in the cost figures

¹⁶⁹ Complete cost figures were retrieved for around 79% of the KIDs processed. The rest of the KIDs had to be discarded from this analysis, as the formatting of the PDF documents did not allow a flawless extraction of the full data.

¹⁷⁰ We allow a rounding error of 0.01%.

are not identified only in less relevant products (in terms of market share). In fact, the incidence of errors is considerably higher in the small group of products with sales over 10 million EUR.

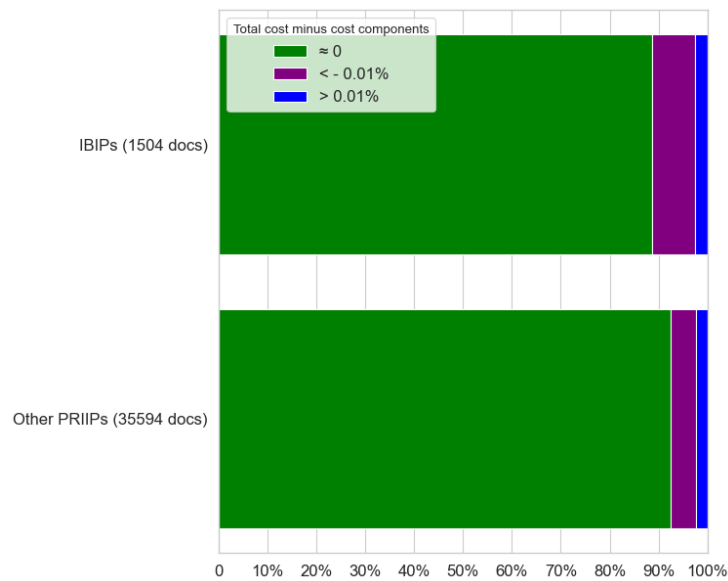
Figure 37
Consistency of breakdown of costs: Funds vs Other PRIIPs



Note: The chart illustrates for how many KIDs the sum of the cost components corresponds to the total costs indicated therein. The green bar shows the share of KIDs where these figures coincide (allowing a rounding error of 0.01%). The purple bar shows the share of KIDs where the cost components are greater than the total costs. The blue bar shows the share of KIDs where the cost components are smaller than the total costs.

Sources: ESMA, Structuredretailproducts.com, financial entities' websites.

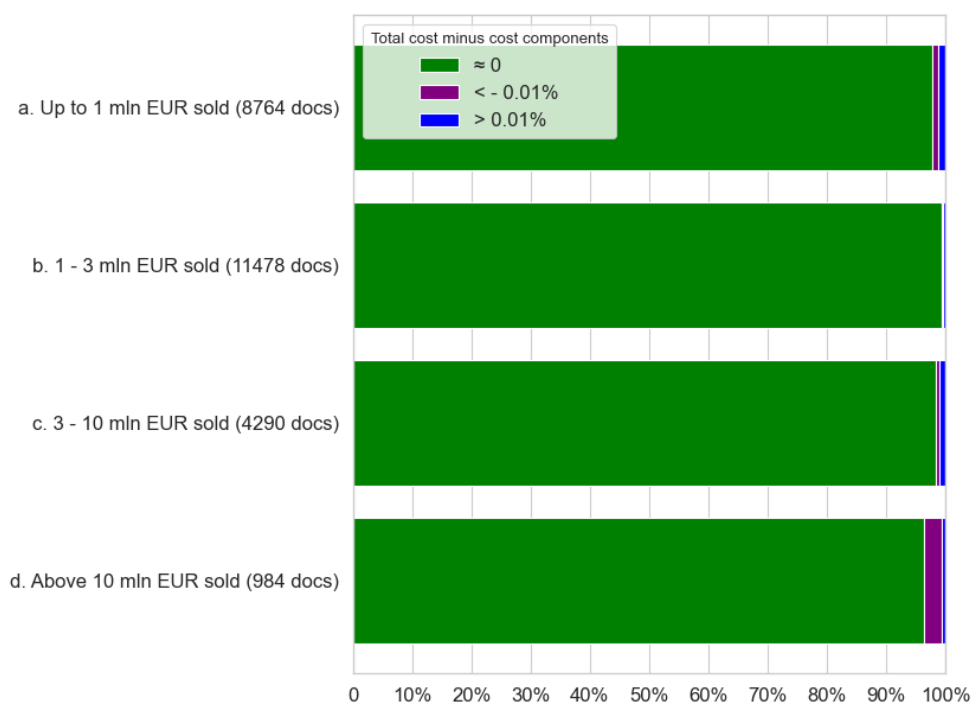
Figure 38
 Application of PRIIPs regulation
 Consistency of breakdown of costs: IBIPs vs Other PRIIPs



Note: The chart illustrates for how many KIDs the sum of the cost components corresponds to the total costs indicated therein. The green bar shows the share of KIDs where these figures coincide (allowing a rounding error of 0.01%). The purple bar shows the share of KIDs where the cost components are greater than the total costs. The blue bar shows the share of KIDs where the cost components are smaller than the total costs.

Sources: ESMA, Structuredretailproducts.com, financial entities' websites.

Figure 39
Consistency of breakdown of costs by sales amount



Note: The chart illustrates for how many KIDs the sum of the cost components corresponds to the total cost indicated therein. The green bar shows the share of KIDs where these figures coincide (allowing a rounding error of 0.01%). The purple bar shows the share of KIDs where the cost components are greater than the total cost. The blue bar shows the share of KIDs where the cost components are smaller than the total cost. Sample includes only KIDs downloaded from SRP.com.
Sources: ESMA, Structuredretailproducts.com.

Key required phrases

In setting out the structure of a KID, the PRIIPs Regulation and Delegated Regulation specify a number of sentences which have to be included in specific sections of the document. For every KID, the ESAs searched for approximately 50 standardised sentences prescribed by the PRIIPs Regulation or Delegated Regulation. The search is non-case-sensitive and allows some variations of punctuation and accented letters; besides this flexibility, not including a prescribed sentence verbatim will result in the sentence not being found.

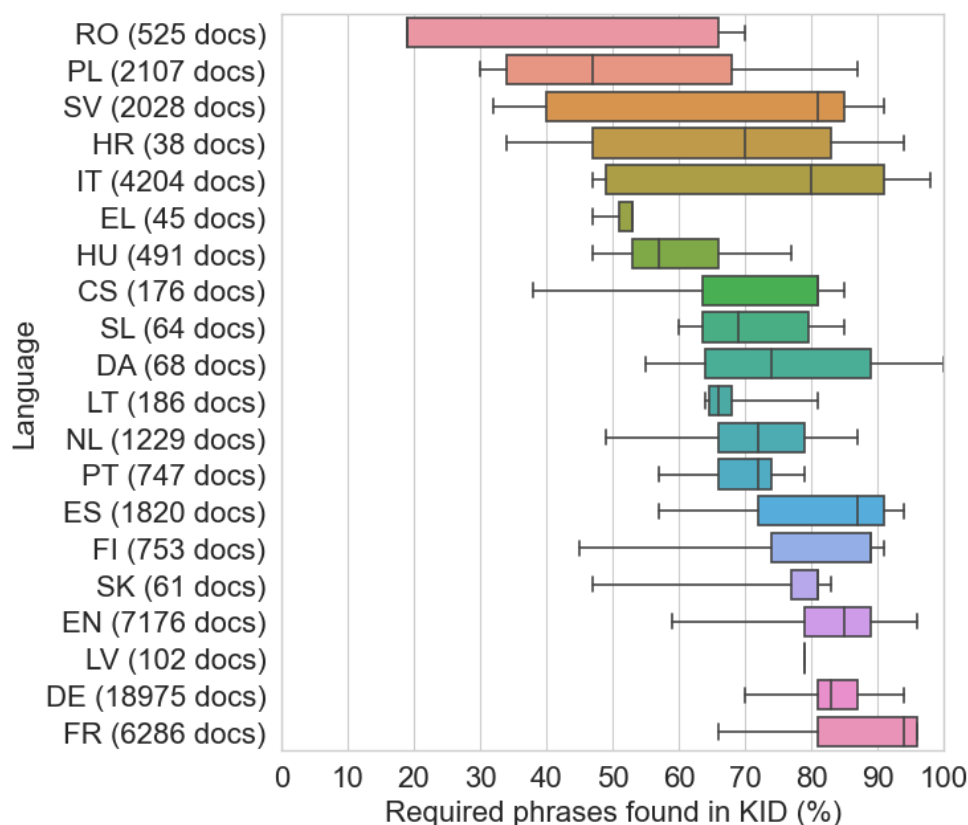
The boxplots in chart figure 40 represent the distributions of the search success rates for documents within each language group. For each KID, a percentage is calculated as the number of required phrases found in the KID over the total number of required phrases.

All language groups contain a relevant number of KIDs which deviate from the prescribed wording. For some languages (e.g. RO, EL, HU, PT), the boxplot indicates that even the top documents with the highest percentage figures lack a considerable share of the required sentences. As these are mostly languages whose alphabets include non-standard letters and/or accents, this might be due to typos in the translation of the PRIIPs Regulation which were corrected by PRIIP manufacturers. Even accounting for this possibility, a wide boxplot (i.e. a large variation in the search success rate for documents drafted in one language) suggests that some PRIIP manufacturers modified or omitted

certain key phrases notwithstanding the fact that others correctly made use of the same phrases in their KIDs.

According to manual checks, cases of required sentences that are entirely missing do exist, but more frequently sentences are included with some variations. Various degrees of semantic and lexical differences between actual and prescribed sentences can be found.

Figure 40
Completeness with respect to required phrases



Note: Distribution of search success rates obtained as the number of required phrases found in a KID over the total number of required phrases which are mandated in the PRIIPs Regulation and Delegated Regulation. The box edges correspond to the 25th and 75th percentiles of the distribution, the outer segments (“whiskers”) represent the 5th and 95th percentiles, and the line inside the box is the median.

Sources: ESMA, Structuredretailproducts.com, financial entities’ websites.

Annex 9 – Information on KIDs reviewed by NCAs

As referred to in Section 3.3.3, this Annex presents the information provided by NCAs relating to the request in the mandate to provide information on the percentage of cases where inaccurate KIDs were identified. For those NCAs that were able to provide information this is provided per NCA in the table below.

Member State / NCA	Information on the review of KIDs and where available number of inaccurate KIDs
Austria FMA	<p>In 2019 and 2020 FMA conducted in-depth analyses of KIDs of Austrian credit institutions. Due to the refinement and re-calibration of the analysis, the 2019 and 2020 analysis are not comparable, but in general, the quality of KIDs for these institutions has increased. The following issues were identified in the course of the analysis. However, not all of these automatically implied an incorrect implementation of PRIIPs Regulation.</p> <p><u>2019</u></p> <p>Performance scenarios</p> <ul style="list-style-type: none"> • Not enough scenarios - 14 • Equal performance values across the scenarios and time horizon - 1,629 • Statistically high performance values (> EUR 20,000) - 1,575 <p>Costs and charges</p> <ul style="list-style-type: none"> • Negative costs - 31 • Statistically high costs - 923 <p>Risk indicator</p> <ul style="list-style-type: none"> • Low risk indicator - 98 <p><u>2020</u></p> <p>Performance scenarios</p> <ul style="list-style-type: none"> • Not enough scenarios - 31 • Equal performance values across the scenarios and time horizon - 330

	<ul style="list-style-type: none"> • Statistically high performance values (> EUR 20,000) - 480 <p>Costs and charges</p> <ul style="list-style-type: none"> • Negative costs - 14 • Statistically high costs - 251 <p>Risk indicator</p> <ul style="list-style-type: none"> • Low risk indicator - 0 <p>For the insurance sector, up to now, we have not found any substantive issues.</p>
Belgium FSMA	<p>The FSMA examined at least one KID by each manufacturer that distributes these products in Belgium. More than 100 KIDs have been checked. As the manufacturers use the same KID model for all their products, the sample can be considered representative.</p> <p>The FSMA has shared with the financial sector the most important and most frequent observations and remarks raised as a result of this examination through a Feedback Statement.</p> <p>The FSMA reviews KIDs on a continuous basis. This is done, depending on the nature of the product and the nature of the transaction, before a product is offered to the public (PRIIPs that are offered to the public with specific marketing material) or during the offering process (IBIPs).</p>
Bulgaria FSC	The FSC has reviewed 14 KIDs for IBIPs that are unit-linked life-insurance contracts and no inaccuracies were found.
Croatia HANFA	<p>Regarding the period 2018-2020, HANFA conducted analyses of whether the KIDs were structured in accordance with the PRIIPs Delegated Regulation and whether they contained the required information. HANFA did not observe any specific issues.</p> <p>Regarding KIDs that were additionally reviewed in 2021, HANFA conducted in depth analyses of the KIDs of insurance companies. In 10 insurers' KIDs, HANFA identified minor and substantive issues.</p>
Cyprus CySEC	The number of inaccurate KIDs based on ongoing supervision work is not available.

	Besides this in 2018, CySEC conducted a thematic review of KIDs and following this published Circular 'C312' Cyprus Securities and Exchange Commission C312 - Findings of Review into Key Information Documents (the "KID") on Packaged Retail and Insurance (cysec.gov.cy)
Czech Republic CNB	Regarding the insurance sector, 71 KIDs have been assessed since 2018 (including 12 MOPs each year in 2020 and 2021) and 4 KIDs contained substantive issues. For investment funds, approximately 200 KIDs are reviewed annually on a basic level, but figures on inaccuracies are not available.
Denmark FSA	Reviews of KIDs are conducted during ongoing supervision activities. It is our experience that there are very few issues relating to inaccurate KIDs. The quantitative data is not recorded in our systems.
Estonia Finantsinspektsioon	Due to a risk-based supervisory approach and as Finantsinspektsioon has not had any complaints regarding PRIIPs since implementation, we have not conducted on-site or off-site controls focusing specifically on PRIIPs.
Finland FSA	The FIN-FSA has done one thematic review (2018), which focused on the overall quality of the KIDs. Besides that, there has not been any ongoing or regular supervision on KIDs so far.
France ACPR	ACPR usually reviews KIDs during on-site inspections of insurance companies, focused on the marketing and distribution of life insurance products. ACPR also conducted in 2018 a survey covering KIDs of the main insurers' euro funds. During the survey in 2018, ten inaccurate KIDs were identified.
France AMF	We do not have the number of KID reviewed, but it is clear that the KIDs reviewed presented many issues, from minor to substantive issues.
Germany BaFin	106 inaccurate KIDs were identified based on the following reviews: 2018 - All PRIIPs 102 - IBIPs 30 - Certificates 32

	<p>2019</p> <ul style="list-style-type: none"> - Certificates 53 - IBIPs 3 <p>2020</p> <ul style="list-style-type: none"> - Certificates 4 - IBIPs 4 - Closed ended fund 1 <p>2021</p> <ul style="list-style-type: none"> - Certificates 8 - IBIPs 38
Bank of Greece	<p>For PRIPs our involvement as a supervisory authority is initiated when a respective complaint is submitted to the Bank of Greece and as concerns the KID no complaints have been filled as yet.</p> <p>Regarding IBIPs, we reviewed 5 KIDs of unit-linked and MOP products and 2 KIDs of profit participation products. Only minor issues were identified.</p>
Hungary MNB	<p>Regarding IBIPs:</p> <p>2018: No issues: 0; minor deficiencies or non-conformities: 1; moderate defects: 2; very substantive issues: 5; total KIDs reviewed: 8.</p> <p>2019: No issues: 0; minor deficiencies or non-conformities: 1; moderate defects: 4; very substantive issues: 3; total KIDs reviewed: 8</p> <p>2020: No issues: 0; minor deficiencies or non-conformities: 3; moderate defects: 1; very substantive issues: 1; total KIDs reviewed: 5</p> <p>2021:</p>

	<p>No issues: 0; minor deficiencies or non-conformities: 2; moderate defects: 1; very substantive issues: 2; total KIDs reviewed: 5</p> <p>In the capital markets, MNB has not identified any issues as of yet.</p>
Iceland FSA	The PRIIPs regulation has only very recently come in to effect in Iceland so we have not started substantive supervision of KIDs.
Ireland CBI	Information on number of KIDs reviewed not available.
Italy Consob	<p>For structured products a sample of 400 KIDs has been reviewed.</p> <p>For derivatives (options, forward, futures, and swaps) the number of KIDs reviewed is around 100.</p> <p>Regarding CFDs, the supervisory activity was carried out for all the KIDs transmitted to Consob.</p> <p>With reference to IBIPs, in 2018 136 KIDs made available by 20 different insurance companies were revised, while in 2019-2020 the sample was broadened to about 500 KIDs.</p> <p>During the years 2020 - 2021, the supervision was focused on manufacturers of securities, derivatives and CIS for which KIDs had not previously been analysed. Around 1,400 KIDs drawn up by 83 manufacturers were revised.</p>
Latvia FCMC	The FCMC does not collect statistics on the number of KIDs reviewed each year. Minor issues were identified for about one-third of IBIP KIDs. During the <i>ex ante</i> notification process of KIDs of AIF most issues are of a minor nature. In rare cases substantive issues (e.g. missing sections) were identified.
Liechtenstein FMA	The KIDs of MOPs have been reviewed and some inconsistencies were identified, but specific data is not available.
Bank of Lithuania	KID compliance checks were conducted in 2018 of all 8 insurance undertakings and branches of EU insurance undertakings that provide unit-linked life insurance services in Lithuania. One product KID was selected at random for review. Similar comments and inaccuracies were found for almost all KIDs.

Luxembourg CAA	The CAA does not have statistics on KIDs reviewed. The products reviewed are life insurance savings products, generally multi-option, during on-site inspections.
Luxembourg CSSF	The CSSF does not keep statistics on the number of inaccurate KIDs identified, but substantive issues have been identified during on-site inspections and ad hoc reviews
Malta FSA	The MFSA conducts periodical exercises in reviewing the KIDs of the local IBIP manufacturers. In total, the MFSA reviewed 27 KIDs pertaining to 5 local IBIP manufacturers. The type of products were split between unit-linked policies and with profits policies. All 27 KIDs reviewed presented some shortcomings.
Netherlands AFM	After implementation of PRIIPs, the AFM conducted a thematic scan on different types of KIDs. The scan included 40 KIDs from different types of developers, such as credit institutions, investment firms, insurance companies, and providers of investment 'objects' such as holiday housing. We continued with a risk based approach and conducted some reviews because of signals we received. There are usually between 1-5 signals per year.
Poland KNF	KIDs are analysed based on reporting from external parties or as part of ongoing supervision.
Portugal ASF	<p>Since the implementation, ASF received 1,475 KIDs via an <i>ex ante</i> notification procedure, regarding all KIDs, both new and updated, for IBIPs.</p> <p>The ASF only has data regarding KIDs rejected during this <i>ex ante</i> notification procedure since 2020. Since 2020 to date, ASF rejected 346 KIDs.</p>
Bank of Portugal	<p>Banco de Portugal has reviewed the KID of every structured deposit issued and distributed in Portugal since the PRIIPs Regulation came into force in 2018, before the product became available to the public. The total number of reviewed KIDs was the following:</p> <p>2018 81 2019 73 2020 51</p> <p>Source: Banco de Portugal's Market Monitoring Report, 2020</p>

	Since the beginning of 2018, on average about 60% of the KIDs for structured deposits notified <i>ex ante</i> to Banco de Portugal have displayed minor accuracy issues. Over the last two years in particular, the incidence of these issues has been declining.
Portugal CMVM	From January 1, 2018 to December 31, 2021, 547 PRIIPs (the products referred to in Article 4(3) of the PRIIPs Regulation, including those mentioned in Article 2(b) of the PRIIPs National Framework), were notified.
Romania ASF	19 KIDs for unit-linked products and with-profits products were reviewed. In the case of other PRIIPs the ASF does not have a centralised reporting system. In the case of listed structured products, the ASF conducted a thorough analysis for each KID. Issues were identified for structured products and for 10 IBIPs.
Slovakia NBS	Ongoing supervision of KIDs is conducted during supervisory reviews (on-site and off-site), but no specific information is available on the number of KIDs reviewed or number of inaccurate KIDs.
Slovenia AZN	The KIDs of unit-linked investment products and index linked investment products have been reviewed and substantive issues have been identified, but no statistics are available.
Spain CNMV	In thematic reviews we have revised 76 KIDs of PRIIPs sold by 56 firms. The coverage of this sample was very high for structured products and derivatives, including CFDs, as the firms selected distributed more than 80% of the volume of PRIIPs sold to retail clients in Spain. For venture capital entities the sample covered 40% of the registered entities. As for KIDs revised in the course of ordinary inspections or other supervisory actions, we do not have a centralised register of KIDs analysed so we cannot provide a concrete number.
Spain DGSFP	20 KIDs for unit-linked insurance products have been reviewed and minor to substantive issues have been found.
Sweden FSA	During a survey in 2018, including 65 KIDs of a variety of product types: <ul style="list-style-type: none"> - In 53 of 65 cases the information needed to be clearer or more accessible. - In 5 out of 65 cases the comprehension alert was insufficient or missing.

Annex 10 - Analysis of Article 2(2)(d) of the PRIIPs Regulation

As referred to in Section 3.6.4, this Annex includes an analysis, in the table below, of the exemption in Article 2(2)(d) of the PRIIPs Regulation, which provides an exemption for ‘securities as referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC’.

Directive 2003/71/EC is the Prospective Directive of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

Products referred to in point (d) of Article 2(2) of the PRIIPs Regulation	Comments
The following securities are currently referred to:	<p>The securities out of scope are identified by a cross reference to some of the exemption cases provided by the Prospectus Directive (2003).</p> <p>The Prospectus Directive (2003) has been repealed by Prospectus Regulation issued in 2017, which is now the reference legal act regarding the prospectus¹⁷¹.</p> <p>The reference made by the PRIIPs Regulation to some of the exemptions provided by the Prospectus Directive (no longer in force) leads to a doubt on whether to consider product out of scope that are in the list of exemptions made by the PRIIPs Regulation recalling the Prospectus Directive (2003) – even if some of the exemptions are no longer provided by the Prospectus Regulation (see below) – or to make a “dynamic interpretation”, so to consider when determining the scope of the PRIIPs Regulation the products contained in the current version of the list of exemptions provided by the Prospectus Regulation. In this second case, the effect shall be the inclusion, within the scope of PRIIPs Regulation, of products that were once provided as exemptions by the Prospectus Directive (2003), but are no longer exempted by the Prospectus Regulation.</p>
(b) non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which	Unchanged under the Prospectus Regulation

¹⁷¹ The Prospectus Regulation provides for a catalogue of exemptions divided into two categories:

- exemptions from the application of the Regulation in its entirety, and
- exemptions from the obligation to publish a prospectus.

Products referred to in point (d) of Article 2(2) of the PRIIPs Regulation	Comments
one or more Member States are members, by the European Central Bank or by the central banks of the Member States;	
(c) shares in the capital of central banks of the Member States;	Unchanged under the Prospectus Regulation
(d) securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities;	Unchanged under the Prospectus Regulation
(e) securities issued by associations with legal status or non-profit-making bodies, recognised by a Member State, with a view to their obtaining the means necessary to achieve their non-profit-making objectives;	Unchanged under the Prospectus Regulation
<p>(f) non-equity securities issued in a continuous or repeated manner by credit institutions provided that these securities:</p> <p>(i) are not subordinated, convertible or exchangeable;</p> <p>(ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument;</p> <p>(iii) materialise reception of repayable deposits;</p> <p>(iv) are covered by a deposit guarantee scheme under Directive 94/19/EC of the European</p>	<p>No longer provided in the list of exemptions by the Prospectus Regulation.</p> <p>The scope of the Prospectus Regulation is now determined by reference to the definition of “securities” in MiFID II (Article 4, paragraph 1, point 44). Securities defined by MiFID II refer to “transferable securities”, including “depository receipts”, the latter defined as follows: “those securities which are negotiable on the capital market and which represent ownership of the securities of a non-domiciled issuer while being able to be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer”. This definition does not include the class of non-equity securities previously provided by letter (f) of the Prospectus Directive (2003) (as such securities were not exchangeable on capital markets).</p>

Products referred to in point (d) of Article 2(2) of the PRIIPs Regulation	Comments
Parliament and of the Council on deposit-guarantee schemes ¹⁷² ;	
(g) non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property or a part thereof and where the shares cannot be sold on without this right being given up;	Unchanged under the Prospectus Regulation
(i) 'bostadsobligationer' issued repeatedly by credit institutions in Sweden whose main purpose is to grant mortgage loans, provided that (i) the 'bostadsobligationer' issued are of the same series; (ii) the 'bostadsobligationer' are issued on tap during a specified issuing period; (iii) the terms and conditions of the 'bostadsobligationer' are not changed during the issuing period; (iv) the sums deriving from the issue of the said 'bostadsobligationer', in accordance with the articles of association of the issuer, are placed in assets which provide sufficient coverage for the liability deriving from securities;	No longer provided in the list of exemptions by the Prospectus Regulation
(j) non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration of the offer is less than EUR 50 000 000, which limit shall be calculated over a	Letter (j) has changed under the Prospectus Regulation but just increasing the total amount to be considered over a period of 12 months as follows:

¹⁷² Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes is no longer in force and currently repealed by Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

Products referred to in point (d) of Article 2(2) of the PRIIPs Regulation	Comments
<p>period of 12 months, provided that these securities:</p> <p>(i) are not subordinated, convertible or exchangeable;</p> <p>(ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.</p>	<p>'non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the Union for the securities offered is less than EUR 75 000 000 per credit institution calculated over a period of 12 months, provided that those securities:</p> <p>(i) are not subordinated, convertible or exchangeable; and</p> <p>(ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument'.</p> <p>(see Article 1, paragraph 4, letter (j), of the Prospectus Regulation).</p> <p>In one Member State, the increasing of the aforementioned limit made it possible to facilitate the issuance by credit institutions of non-equity securities (with the characteristics provided by the Prospectus Regulation), taking into account the economic structure of the market, composed by a few big credit institutions and many small-medium ones.</p>

Annex 11 - Example of summary table for multi-option products

As referred to in Section 3.9, the below example shows the type of information that could be included in a summary table providing very short high-level information on each investment option in one single place, to allow an initial filtering to be done by the retail investor.

Name of Investment Option	Type	Recommended holding period	Summary risk indicator	Annual cost impact of the insurance contract	Annual cost impact of the investment option	Overall annual cost impact	Key features
Equity Europe fund	Unit-linked investment fund	5 years	4	1%	2,5%	3,5%	<input checked="" type="checkbox"/> Sustainable investment objective <input checked="" type="checkbox"/> Equity market exposure <input type="checkbox"/> Bond market exposure <input type="checkbox"/> Other : (explain)
Other investment options	...						

Annex 12 – Examples of new section on sustainable investment objectives

As referred to in Section 3.10, the two examples below show two possible ways in which a new section covering any sustainable investment objective could be integrated into the current KID template.

Example 1 (above the ‘What is this product?’ section)

Key Information Document		
Purpose		
This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.		
Product		
[Name of Product]		
[Name of PRIIP manufacturer]		
[Alert (where applicable) You are about to purchase a product that is not simple and may be difficult to understand]		
Does this product have a sustainable investment objective?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No, but it promotes environmental or social characteristics	<input type="checkbox"/> No
<ul style="list-style-type: none"> • Minimum share of sustainable investments: x% • Minimum share of investments in economic activities that qualify as environmentally sustainable under the EU Taxonomy: y% • Does this financial product consider principal adverse impacts on sustainability factors? Yes <input type="checkbox"/> No <input type="checkbox"/> 		
You can find more information at: www.greeninsurance.com		
What is this product?		
Type		
Term		
Objectives		
Intended retail investor		
[Insurance benefits and costs]		

Example 2 (below the 'What is this product?' section)

Key Information Document		
Purpose	This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.	
Product	[Name of Product] [Name of PRIIP manufacturer]	
	[Alert (where applicable) You are about to purchase a product that is not simple and may be difficult to understand]	
What is this product?		
Type		
Term		
Objectives		
Intended retail investor		
[Insurance benefits and costs]		
Does this product have a sustainable investment objective?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No, but it promotes environmental or social characteristics	<input type="checkbox"/> No
<ul style="list-style-type: none">• Minimum share of sustainable investments: x%• Minimum share of investments in economic activities that qualify as environmentally sustainable under the EU Taxonomy: y%• Does this financial product consider principal adverse impacts on sustainability factors? Yes <input type="checkbox"/> No <input type="checkbox"/>		
You can find more information at: www.greeninsurance.com		