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Final Report following joint consultation paper concerning amendments to the PRIIPs KID

Follow up to proposed amendments to Commission Delegated
Regulation (EU) 2017/653 of 8 March 2017 on key information
documents (KID) for packaged retail and insurance-based
investment products (PRIIPs) and next steps

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1. Executive Summary and overview of the Final Report

This Final Report follows a consultation paper (CP) launched by the European Supervisory Authorities (ESAs) on 8 November 2018¹ on targeted amendments to Commission Delegated Regulation (EU) 2017/653 of 8 March 2017² (hereinafter “PRIIPs Delegated Regulation”) concerning the Key Information Document (KID) for packaged retail and insurance-based investment products (PRIIPs). It summarises the responses received to that consultation and sets out the envisaged next steps.

The ESAs have reviewed all of the feedback provided to the CP, which overall indicated that stakeholders did not support the proposed targeted amendments. The ESAs have also taken into account the latest information regarding discussions between the European co-legislators on the application of the KID by UCITS and relevant non-UCITS funds³ and the timing of a review of PRIIPs.

Based on this feedback and these developments, the ESAs have decided that it is not appropriate to propose substantive amendments to the PRIIPs Delegated Regulation at this time. Instead, the ESAs have initiated work to provide input to a review of PRIIPs Delegated Regulation during 2019. This Final Report sets out how the ESAs plan to conduct this work. The feedback received from this public consultation will also be used to inform this upcoming work.

At the same time, the ESAs are of the view that an immediate supervisory response is needed in relation to the issues discussed in the CP concerning the expectations that the performance scenarios may provide to retail investors and the current practices to address this issue.

The Final Report is divided into the following main Sections:

- Section 2 sets out the background to the CP
- Section 3 describes the political developments since the publication of the CP
- Section 4 summarises the feedback provided to the CP and the ESAs’ response to this feedback at this stage, including the issuance of a Supervisory Statement on performance scenarios
- Section 5 explains the intended next steps regarding the work to review the PRIIPs Delegated Regulation this year

The joint ESA Supervisory Statement referred to above is included as an Annex to this Final Report and will also be published separately.

¹ The public consultation was open for four weeks and closed on 6 December 2018.

² 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

³ I.e. non-UCITS funds offered to retail investors to which Article 32(2) of the PRIIPs Regulation applies.

2. Background

The Regulation⁴ on packaged retail and insurance-based investment products (hereinafter “PRIIPs Regulation”) provides a temporary exemption for management and investment companies and persons advising on, or selling, UCITS from the obligation to produce and provide a PRIIPs KID.⁵ For such funds a Key Investor Information (KII) Document is currently provided to investors in accordance with Directive 2009/65/EC⁶ (hereinafter “UCITS Directive”). According to the original PRIIPs Regulation, the exemption from the PRIIPs KID obligations ceases to apply on 31 December 2019.

A review of the PRIIPs framework was envisaged to take place by the end of last year (31 December 2018)⁷. This was intended to follow from two years of application; however as the original application date needed to be deferred by one year this shortened the time period for a review. In view of this, the European Commission informed the ESAs in July last year that it intended to defer the review of the PRIIPs Regulation until a later date in order to allow for the collection of robust evidence and data, such that the review would not be concluded before the envisaged end of the exemption for UCITS at the end of 2019⁸.

On 1 October last year, the ESAs stated that they consider it necessary to prepare targeted amendments to the PRIIPs Delegated Regulation. These would provide for the appropriate application of the PRIIPs KID requirements by UCITS and relevant non-UCITS funds if the exemption would cease to apply at the end of 2019. These amendments also aimed to address some specific issues that have arisen from the practical application of detailed technical requirements, prior to the overall review of the PRIIPs Regulation.

During the autumn of 2018, the co-legislators also initiated discussions regarding potential legislative changes relating to the UCITS exemption and the timing of the review of PRIIPs. The ESAs proposals were therefore made in the context of these ongoing political discussions.

When preparing the CP the ESAs were cognisant that for any amendments to be implemented by the end of 2019, it would be necessary to submit regulatory technical standards (RTS) to the European Commission as early as possible in the first quarter of 2019. The ESAs therefore stated their intention to conclude this work and publish a Final Report during January 2019.

⁴ 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).

⁵ The exemption also applies to non-UCITS funds in Member States which extend the application of UCITS rules on the format and content of the UCITS key investor information to non-UCITS made available to retail investors (Article 32(2) of the PRIIPs Regulation).

⁶ DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

⁷ Article 33(1) of PRIIPs Regulation.

⁸ [Request to the ESAs to develop guidance on facilitating the production and distribution of information on investment funds as of 1 January 2020](#)

3. Developments since the publication of the consultation paper

On 3 December the European Parliament Committee on Economic and Monetary Affairs (ECON) adopted amendments to the PRIIPs Regulation, which would provide for:

- A review of PRIIPs by 31 December 2019 (amendment to Article 33)
- The extension of the exemption for UCITS and relevant non-UCITS funds until 31 December 2021 (amendment to Article 32)

These amendments were adopted in the context of discussions on amendments to the Regulation on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013 and (EU) No 346/2013.

Taking into account the latest discussions, the ESAs are working on the assumption that these amendments are likely to be ratified by the European Commission and Council in the first quarter of this year.

4. Feedback statement

The ESAs received 98 responses to the CP. The responses have been published on the Joint Committee website unless it was requested that the responses should be treated as confidential.

4.1 General comments

Overall stakeholders were not in favour of the ESAs proceeding with targeted amendments to the PRIIPs Delegated Regulation prior to a more comprehensive review of PRIIPs. Some of the points made in this regard were that:

- While some of the proposals were considered to have merits, overall the proposed amendments were considered to be of limited benefit and to not address the fundamental issues;
- In view of the first bullet point, the benefits of the proposals were generally not seen to outweigh the expected implementation and compliance costs;
- Various respondents commented that there was insufficient time during the shortened public consultation to fully analyse the proposals and their implications.

As stated in Section 1, the ESAs took into account this feedback when considering the next steps.

4.2 Proposals for changes to the performance scenarios

4.2.1 Information on past performance

Most respondents to the CP raised concerns regarding the ESAs' proposal to include information on past performance in the KID where it is available, in addition to the existing future performance scenarios. The main points raised can be summarised as follows:

- Some stakeholders stated their view not to include information on past performance on the basis that it may not improve investment decision making. It is argued, for example, that this information can encourage pro-cyclical investment behaviour and overestimates the actual level of performance (due to the so-called "survivorship bias"). Several academic studies based on testing conducted with groups of investors were also submitted, which provide evidence that past performance can result in sub-optimal investment decisions.
- On the other hand, a significant number of respondents are in favour of the inclusion of past performance, at least for non-structured collective investment schemes (CIS). For these types of PRIIPs, it is argued that this is the only objective and reliable indicator and that it can help

the investor to assess the ability of the investment manager. However, if past performance information is included, there is a strong preference for including only information on past performance (and not additionally future performance scenarios).

- Similarly, numerous stakeholders raised concerns that the inclusion of past performance in addition to the existing future performance scenarios will not address the concerns that have been raised with the existing performance scenarios. The argumentation provided was that in cases where there has been a period of unusually good market performance this would be reflected in both measures. Thus, presenting both past performance and future performance scenarios may additionally confuse investors, who may not appreciate the link between these two sets of information.
- Furthermore, it was stated that the inclusion of information on past performance together with the future performance scenarios would result in challenges to keep to the three sides of A4-sized paper limit of the KID.
- A substantial number of comments were also submitted regarding the types of products where past performance information should not be considered to be available, in particular:
 - Where past performance would need to be simulated (e.g. structured funds, structured products and derivatives), it was stated that this would raise significant technical challenges (e.g. availability of data), that it would not provide meaningful or comparable information to investors, and that it could create adverse incentives for example to design products that would have more favourable simulated past performance;
 - Regarding insurance-based investment products, it was stated that there are issues to include past performance for certain product types, for example where there is a significant biometric risk component or where the product has a guarantee.

Taking into account this feedback, as well as the expected 2 year extension of the exemption for UCITS and relevant non-UCITS funds which currently display information on their past performance within the KIID, the ESAs have decided not to propose the inclusion of past performance information in the PRIIPs KID at this stage.

However, the ESAs intend to consider further in the context of their upcoming work (see also Section 5) if and how information on past performance could be included in the PRIIPs KID and for exactly which types of PRIIPs. This work would be with a view to the amendments needed in relation to the potential inclusion of UCITS within the scope of PRIIPs at a later stage. The ESAs will also consider if there are synergies in relation to the ongoing work to report on the costs and past performance of retail investment products. In relation to insurance-based investment products, for example, where respondents to the CP highlighted challenges to present information on past performance, or to do so using the approach in the KIID, EIOPA recently stated that it will work further during 2019 “on developing its methodology and approach” to identify and report on past performance in order to have complete and consistent data, with a view to ensuring the significance of the analysis⁹. This

⁹ EIOPA: First Report Costs and Past Performance (December 2018), page 36.

applies, in particular, for products which distribute a portion of the PRIIP manufacturer's profits to retail investors (e.g. “profit-participation”).

4.2.2 Amendments to the narrative explanations

The vast majority of respondents consider that the proposals to strengthen the narrative explanations are an improvement on the current text in the PRIIPs Delegated Regulation. At the same time, as stated above in Section 4.1 respondents were generally of the view that it was preferable to not proceed with the amendments prior to a wider review of PRIIPs. It was argued that such changes would not address the fundamental concerns regarding the performance scenarios, and some respondents highlighted that retail investors rarely heed such warnings. In addition, various stakeholders suggested that it would be preferable to address the issue, before a wider review of PRIIPs, via a level 3 measure. A range of comments were also provided on the specific wording proposed, with some arguing for shorter and more concise text while others argued for additional explanations of the nature of the performance scenarios, for example their statistical likelihood.

Overall, as stated above, the ESAs are of the view that it is no longer appropriate to submit substantive amendments to the European Commission at this stage. However, as stated in Section 4.1.7 of the CP, the ESAs are aware that some PRIIP manufacturers have already decided to supplement the information in the KID on the performance scenarios, and the CP stated that the ESAs intend ‘in a next step to communicate its views on these practices in order to promote appropriate and consistent approaches’ before the conclusion of a review of the KID. In addition, the feedback received from the public consultation regarding the concerns with the current approach and support for strengthening the warnings in the KID, is considered to confirm the relevance of supervisory steps to reduce the risk that the meaning of the performance figures is misinterpreted or that there is undue reliance on them.

Consequently, the ESAs have decided to recommend that in the relevant cases PRIIP manufacturers include an additional statement in the KID warning the retail investor of the limitations of the performance figures shown. A Supervisory Statement addressing this issue and setting out the ESAs’ recommendations is included below as an Annex to this Final Report. The Supervisory Statement will be published separately on the Joint Committee website.

4.2.3 Comments on the analysis of other potential options

The ESAs have reviewed the comments received on the analysis of other potential options for amendments to the performance scenarios. These will be used to inform the upcoming work by the ESAs.

Use of the risk neutral expectations

The vast majority of respondents do not favour using risk-neutral expectations, as discussed in the CP, as the anchor for the performance scenarios. The principle reason given for opposing the use of risk-neutral expectations is that performance scenarios would not differentiate products linked to

different assets. Most respondents who favour a change to the methodology along these lines mentioned the need to consider the risk premia of different asset classes. These respondents see merit in exploring how to specify and include risk premia as part of a wider review of PRIIPs.

Approaches to highlight the range of outcomes

Many respondents expressed that they see significant drawbacks to certain aspects of this option. Some of the arguments made are the following:

- Investors could believe that the two values or scenarios presented define the maximum and minimum outcomes;
- Limiting the number of scenarios disclosed will omit or obscure relevant information on important product features e.g. barriers and early redemption;
- Not disclosing the moderate scenario is problematic as it is generally used as the basis for the cost (reduction in yield) calculation.

Equally, some respondents see merits in reducing the number of scenarios disclosed to investors, in terms of simplifying the information presented to investors, and in particular there was support from some stakeholders for the removal of the moderate scenario on the basis that investors believe this to be the most likely to happen.

Extending the historical period used to measure performance

Most respondents agreed with the ESAs' analysis that this option would not bring material improvements to the methodology that outweigh its drawbacks.

4.3 Other specific amendments

Overall, the respondents to this section of CP were supportive of the intention to address the issues identified. However, for a number of the proposals different views were expressed. In view of this, the issues can be generally divided into:

- Those where the ESAs are of the view that some further analysis is needed before appropriate solutions can be proposed. This includes the issue of the calculation methodology for regular premium or investment PRIIPs, the presentation of performance for products with autocallable features and the growth assumption for the reduction in yield calculation;
- Those where the policy solutions were supported, such that the ESAs would intend to make the type of changes proposed in the CP when proposing an RTS amending the current PRIIPs Delegated Regulation in a next step; this includes the specific amendments concerning the summary risk indicator (SRI) and narratives for performance fees.

In addition, given that there will be some time before any changes to the PRIIPs Delegated Regulation are implemented, the ESAs will continue to consider if any clarifications via a level 3 measure would be relevant in relation to these issues in the meantime before the conclusion of a review of the KID.

The subsequent sub-sections summarise the main themes that the ESAs identified from the feedback received to the CP.

Regular premium or regular investment PRIIPs

While several respondents are in favour of clarity from regulators as to the approach to be applied to these types of products, overall most respondents were of the view that it would be preferable to consider the issue further during a wider review of PRIIPs with a view to:

- Adequately testing the approach on the wide range of different types of PRIIPs;
- Developing a more detailed methodology that could also be thoroughly reviewed by stakeholders;
- Addressing comprehensively the implications for the performance scenarios as well as for the market risk measure;

PRIIPs with autocallable features

While the majority of stakeholders who responded on this issue were supportive of the proposals in the CP, a significant minority of stakeholders did not agree. In terms of the latter, this concerned both the presentation of figures within the performance scenario table as to how to best show when a product would be called under a particular scenario, as well as how to reflect the autocallable feature in the underlying methodology used to calculate the performance figures.

Summary Risk Indicator

Nearly all respondents who commented on the possibility of additional text and the amendment to Annex III, Point 3(a) of the PRIIPs Delegated Regulation spoke in favour of the ESA proposals.

Performance fees

The vast majority of respondents agree with the proposal to increase flexibility to explain performance fees. Those who were not supportive of the change in general did not agree with the general concept of aggregating performance fees to the rest of costs. One respondent noted that some flexibility may also be needed in relation to which party receives the performance fees, for example it may be not the PRIIP manufacturer, such as in funds of funds.

Growth assumption for the reduction in yield calculation

The majority of respondents were not supportive of the proposal to replace the growth assumption taken from the moderate scenario with 3% on the basis that it may not be appropriate for certain products, e.g. money market funds, and therefore may not provide an appropriate indication of the costs. In view of this, some stakeholders were in favour of retaining the current approach in the PRIIPs

Delegated Regulation. At the same time a number of respondents welcomed the proposal, although it was also acknowledged that more time would be beneficial to assess the consequences of the change.

4.4 Amendments arising from the possible end of the exemption in Article 32 of the PRIIPs Regulation

Most stakeholders did not comment on the details of the proposal to incorporate requirements currently in the UCITS Regulation 583/2010 into the PRIIPs Delegated Regulation, in view of the ongoing discussions regarding the timing of the exemption in Article 32 of the PRIIPs Regulation.

Various stakeholders, did, however, respond to express concerns at the possibility that the KIID could be retained for institutional investors even if UCITS were to come into the scope of PRIIPs.

In addition, it was highlighted that if the exemption for UCITS and relevant non-UCITS funds in Article 32 of the PRIIPs Regulation is extended beyond 31 December 2019, this would require also an amendment to Article 18 of the PRIIPs Delegated Regulation. This provision allows for use of the KIID to provide specific information to retail investors on underlying investment options (in the case of multi-option products) that are UCITS.

Regarding Article 18 of the PRIIPs Delegated Regulation, the ESAs agree that, since the deadline for the application of Article 14(2) of the PRIIPs Delegated Regulation of 31 December 2019 is based on the existing deadline in Article 32 of the PRIIPs Regulation of 31 December 2019, an extension of latter deadline would also necessitate a corresponding extension of the deadline in the third sub paragraph of Article 18.

Subject to the agreement by the co-legislators of the amendments to Article 32 of the PRIIPs Regulation adopted by ECON, the ESAs intend to propose an amendment to Article 18 of the PRIIPs Delegated Regulation, to be applicable from 1 January 2020.

4.5 Additional issues raised by CP respondents

The responses to the consultation included feedback on some other issues that were not addressed in the proposals or analysis in the CP, that stakeholders highlighted as critical to address during a review of PRIIPs. Several common issues can be identified based on the responses, including concerns regarding the appropriateness of the transaction costs methodology and in particular the approach to identify implicit transaction costs (the so-called “slippage” methodology), as well as concerns that the reduction in yield cost indicator is not well understood by retail investors.

As signalled within the CP, when identifying the issues that were considered relevant to address during the targeted amendments, it was necessary to prioritise taking into account the urgency of the issue, the extent to which the information gathered by the ESAs since 1 January 2018 indicated that the

current rules may not be achieving their intended outcomes in practice, as well as the feasibility of addressing the issue within the timeframe.

The ESAs have taken note of the views expressed as to the importance of assessing these additional issues and will consider them further in a next step as part of their upcoming work – see Section 5 below.

5. Intended next steps

This Section considers the overarching next steps that the ESAs intend to take following the public consultation, including elements of process or procedure.

The ESAs have initiated work to be able to provide input to a review of the PRIIPs Delegated Regulation during 2019. As part of this work, from a process perspective, the ESAs would like to highlight the following:

- The ESAs intend to finalise their work, including proposing new RTS by the end of this year, well before the expected end of the exemption for UCITS at the end of 2021. It is understood that amendments to the PRIIPs Delegated Regulation could be applied to existing PRIIPs during 2020 before the expected end of the exemption for UCITS;
- The ESAs will work with the European Commission regarding the possibility to test both the existing KID approaches and new proposals on consumers; the importance of this aspect of the review was underlined by many respondents to the CP;
- The ESAs will continue to engage with stakeholders, including on any specific legislative changes proposed and would expect to launch a further public consultation during 2019. The ESAs will also consider the relevance of re-establishing a consultative expert group in order to gather technical input and expertise from external stakeholders.

In terms of the envisaged scope of the work, the ESAs will examine in further detail the feedback provided to this public consultation as well as the evidence gathered so far following the implementation of the KID. In particular, the ESAs have taken note of wider concerns that have been raised regarding whether the KID is achieving its overarching objectives of promoting greater investor understanding and comparability of PRIIPs. Therefore, as well as assessing the practical application of specific rules, it is also intended to assess more broadly if the current approaches are meeting these objectives or if more fundamental changes are needed.

Given that the ESAs were jointly mandated to develop RTS for the presentation and content of the KID, as well as the inherent methodologies for the calculation of risk, reward and costs, and in view of the ESAs' obligation to review the application of RTS adopted by the European Commission and to propose amendments where appropriate, the ESAs intend to focus their work on the need for amendments to the PRIIPs Delegated Regulation, which are based on these RTS. However, where the information collected and analysis conducted on the application of the KID during the course of this work would indicate that changes to the PRIIPs Level 1 Regulation may be needed in order to achieve the optimal outcomes in relation to the requirements in the PRIIPs Delegated Regulation, the ESAs will consider whether it is relevant to additionally recommend such changes to the co-legislators.

As regards the PRIIPs Delegated Regulation, the ESAs would intend to broaden the scope of the review beyond the areas identified during this CP on targeted amendments and examine each of the main

aspects of the KID template. However, in particular the ESAs would expect to analyse the relevance of changes in relation to the following areas:

- Performance scenarios: as well as the issues considered in the context of the CP, such as the inclusion of information on past performance and the narrative explanations, the ESAs would intend to assess in more detail the relevance of changes to the methodology underpinning the future performance scenarios and their presentation, including the intermediate performance scenarios as well as the merits and draw-backs of qualitative performance scenarios.
- Potential inclusion of UCITS in scope: while any decision on the expiry of the UCITS exemption will be determined by the co-legislators, it is relevant for the ESAs to prepare for the possible inclusion of UCITS within the scope of the PRIIPs Regulation, by considering further the issues discussed in Section 4.3 of the CP and the extent to which aspects of the UCITS Regulation 583/2010 would need to be reflected within the PRIIPs Delegated Regulation.
- Costs: based on the feedback provided to the CP, as well as other information gathered by the ESAs following the implementation of the KID, it is intended to examine whether the methodologies to calculate, and the approach to present, costs, are achieving the intended outcomes in terms of capturing all products costs and facilitating comparability, as well as the interaction with other legislation, in particular MiFID II and IDD. The expected focus of this analysis would be the transaction cost methodology and the reduction in yield (RIY) approach.
- PRIIPs offering a range of options for investment: the information gathered by the ESAs following the implementation of the KID would indicate that, where the approach in Article 10(b) of the PRIIPs Delegated Regulation is applied (i.e. the use of a “generic KID”), there are challenges for retail investors to understand the interaction between the “generic KID” and the “specific information” for the underlying investment option, and to compare between different multi-option products (MOPs), in particular concerning the costs. While such challenges may arise from the disclosure of two types of pre-contractual information documents (the UCITS KIID and the PRIIPs KID) which can render difficult the comparability and aggregation at the level of the contract, it is considered relevant to examine more generally whether the approach in Article 10(b) is delivering an appropriate outcome for the retail investor and to assess whether regulatory changes would be necessary, or improvements can be made by providing additional guidance.
- 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.
- Other specific changes: this would entail follow-up analysis of the issues discussed within Section 4.2 of the CP as well as assessment of the need for other specific changes. As part of this, the ESAs will consider further the issues that have been addressed within Q&A; for

example to assess whether revisions to the PRIIPs Delegated Regulation in these areas would be beneficial to ensure that the approaches set out in Q&A are applied consistently across Member States.

The ESAs are aware that the amendments to the PRIIPs Regulation regarding the exemption for UCITS and the review of PRIIPs have not yet been formally agreed by the co-legislators and therefore will continue to monitor these developments and update their planning accordingly.

Furthermore, given that any legislative changes resulting from a review of PRIIPs will not be implemented before 2020, the ESAs will also continue their work to monitor implementation of the current PRIIPs rules and to publish level 3 measures, such as Q&A, where appropriate.

6. Annex – Joint ESA supervisory statement concerning the performance scenarios in the PRIIPs KID

Statement

This supervisory statement of the European Supervisory Authorities (ESAs) addresses the response to concerns that the information in the Key Information Document (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs) describing what the retail investor could get in return (“performance scenarios”) can in certain cases provide retail investors with inappropriate expectations about the possible returns they may receive.

The overall objective of this statement is to achieve a high, effective and consistent level of regulation and national supervision promoting a level playing field and the protection of retail investors.

In the view of the ESAs the performance scenarios could, based on the recent economic environment, provide an overly positive outlook for potential future returns if they are taken to be best estimate forecasts. This relates, in particular, to where products have experienced positive returns over the previous five years that are above the long-term norm. It is important therefore that retail investors are made fully aware of the limitations of the figures provided in the performance scenarios.

The ESAs’ assessment is based on the observations collected and analysis conducted by the ESAs and by National Competent Authorities (NCAs) in the European Economic Area (EEA) since the implementation of the PRIIPs KID at the start of 2018.

PRIIP manufacturers are recommended therefore to take the following into account in relation to the presentation of performance scenarios by means of the Templates A and B of Part 2 of Annex V of the Commission Delegated Regulation (EU) 2017/653¹⁰:

- In view of the potential risk that the performance scenarios may provide retail investors with inappropriate expectations about the possible returns they may receive, it is recommended to include a statement in the KID warning the retail investor of the limitations of the figures shown.

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).

- For the purpose of consistency, it is recommended that the following approach is taken, or a similar approach where adjustments to the proposed wording are necessary to reflect specific features of the PRIIP:
 - To add under the heading of “Performance scenarios” within the section “What are the risks and what could I get in return”, an additional warning that:

Market developments in the future cannot be accurately predicted. The scenarios shown are only an indication of some of the possible outcomes based on recent returns. Actual returns could be lower¹¹.
 - It is recommended to highlight this text, for example by using a bold format.
- The other relevant information provided to the retail investor in relation to the PRIIP at the pre-contractual or post-contractual stage could also include additional explanations or put the performance scenario figures in the KID in additional context.
- Any steps taken should be proportionate and should provide information that is complementary to the existing information within the KID. Any additions to the KID should be limited to what is considered essential to ensure that the presentation of performance scenarios is fair, accurate, clear and not misleading. Retail investors should not be encouraged to disregard the information in the KID.

NCA's are recommended to monitor whether the steps taken by PRIIP manufacturers are in line with the above recommendations.

Context

Article 6(3)(d)(iii) of the PRIIPs Regulation¹² requires PRIIP manufacturers to include appropriate performance scenarios and information about the assumptions made to produce them in the KID. Commission Delegated Regulation (EU) 2017/653 sets out how this is to be done. For most PRIIPs¹³ the prescribed methodology requires an illustration of how the PRIIP could perform according to four different scenarios (stress, unfavourable, moderate and favourable). The figures presented in these scenarios are generally derived from a model

¹¹ The last sentence is only applicable where the performance can be worse than shown in the performance scenarios.

¹² 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).

¹³ There is an exception, for example, for options and futures traded on a regulated market to present performance in the form of a pay-off structure graph (Article 3(5) of Commission Delegated Regulation (EU) 2017/653.

which simulates possible outcomes based on the returns or prices, and fluctuations in those returns, over the previous 5 years. In summary:

- The unfavourable, moderate and favourable scenarios reflect the 10th, 50th and 90th percentile returns respectively¹⁴;
- The stress scenario is calculated using a different model with a view to setting out significantly unfavourable impacts.

At the same time, the PRIIPs Delegated Regulation states that the performance scenarios shall be presented in a way that is fair, accurate clear and not misleading and that is likely to be understood by the average retail investor (Annex V, Part 1, Point 1).

During the ESA Consultation Paper (CP) published in November 2018¹⁵ on amendments to the PRIIPs KID, the ESAs recognised the concern that the performance scenarios could, in view of the recent economic environment, provide an overly positive outlook of potential returns. This relates to, in particular, where a product has experienced positive returns over the previous five years, that can be seen as above the longer-term norm. Given the very positive performance of many asset classes over previous years, it is acknowledged that this issue pertains to a wide range of PRIIPs. While the KID must already include statements to clarify that the actual return will vary depending on the performance of the market, the ESAs stated that the feedback since the implementation of the KID would suggest that these explanations may not be conveying the intended messages as clearly as they should do. Therefore, the ESAs proposed that changes to how the information is presented in the KID could reduce the risk that the meaning of these figures is misinterpreted or that there is undue reliance on them.

In addition, the ESAs also stated that they are aware that some PRIIP manufacturers have decided to supplement the information in the KID on the basis that the performance scenarios may be seen to provide too positive potential returns to retail investors in the current environment. In some cases such practices have been discussed with their NCA.

While these practices may have been with a view to protecting retail investors, some of them raise supervisory concerns in terms of the extent to which they contradict rather than complement the other information in the KID. Therefore, in the CP the ESAs stated that they intend to communicate their views on these practices in order to promote appropriate and consistent approaches prior to a review of the PRIIPs framework.

¹⁴ Future outcomes are impossible to predict. However, a model of how prices evolve in a financial market can be used to estimate the distribution of returns accessible to the investor. The methodology for performance scenarios assumes that the model results in the distribution of returns for the PRIIP (or the assets underlying the PRIIP) observed over the past 5 years. The historical distribution of returns is used to estimate the distribution of returns of the PRIIP at the end of the recommended holding period. The 10th, 50th and 90th percentile returns are read from this estimated distribution.

¹⁵ JC 2018 60