

# Call for evidence on the European Commission mandate regarding the PRIIPs Regulation

Fields marked with \* are mandatory.

## 1. General Information

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\* Please indicate the desired disclosure level of the comments you are submitting:

- Confidential  
 Public

\* Stakeholder

Deutscher Derivate Verband e.V.

\* Sector

- Investment management  
 Insurance  
 Banking (structured products/ derivative products)  
 Other

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## 2. Introduction

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In the September 2020 new Capital Markets Union 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. [1] The Commission is also undertaking an extensive study that was launched in 2020, which involves analysis of the PRIIPs Key Information Document (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 JC 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 Regulation (EU) 1286/2014 on packaged retail and insurance-based investment products (PRIIPs) [2]. 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

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, 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. Indeed, the ESAs have previously provided their views on the need for changes to the PRIIPs Regulation in a number of areas. [3] Consequently, this call for evidence requests feedback on a range of other issues, where the ESAs are considering the relevance to additionally provide advice to the Commission.

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 EIOPA [4] and ESMA [5] regarding other aspects of retail investor protection, as part of the work to develop a retail investment strategy. The ESAs are seeking to coordinate 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 call for a thorough involvement of stakeholders to ensure that they can adequately contribute to the formulation of the advice from the beginning of the process. At the same time, the short timeframe available to prepare this advice, places constraints on the type of consultation and time that can

be given for responses. Taking into account these constraints, as well as the nature of the request from the Commission, which seeks various different types of evidence regarding current market practices, the ESAs have decided to launch a call for evidence. The responses provided will be used to shape the technical advice to the Commission. The ESAs also plan to hold a stakeholder event in Q1 2022 before finalising the advice. Further details about this event and how to register will be available via the relevant sections of the ESAs' websites in due course.

Where questions in this call for evidence ask for respondents' "experiences" regarding a certain issue or topic, **please provide information regarding the basis for the views provided.** This might include whether the views are based on actual experiences, such as selling, advising on, or buying PRIIPs, a survey of market participants, academic research undertaken etc. Manufacturers of products, which currently benefit from an exemption to produce a KID, such as fund managers, are not precluded from sharing evidence or experience under this call, but should clarify the context in which they would provide comments.

[1] EU strategy for retail investors (europa.eu)

[2] Call for advice

[3] See for example the Joint ESA Supervisory Statement – application of scope of the PRIIPs Regulation to bonds (JC 2019 64), or the Final Report following consultation on draft regulatory technical standards to amend the PRIIPs KID (JC 2020 66).

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

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

**1. Please provide any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.**

DDV is the industry representative body for the 15 leading issuers of structured products in Germany. DDV members are among the most important issuers of structured products in Germany. They represent more than 90 per cent. of the total market. DDV's work is supported by 22 sponsoring members, including the stock exchanges in Stuttgart, Frankfurt and Munich as well as direct banks and online brokers. We appreciate the possibility to comment on the PRIIPs Regulation on KID in the course of its review.

In our observation, the stakeholders have adapted to the PRIIPs regime in spite of its drawbacks. On their side, market participants have developed the necessary technical platforms and integrated the regulatory adjustments in their processes.

From the investor perspective, it is proved that the current regulatory requirements lead to information sheets that are not comprehensible for investors in a satisfactory manner. Consequently, many clients do not read the KIDs at all because they do not offer them any added value. Furthermore in an academic survey performed by Prof. Stephan Paul from Bochum University in February 2019 under the title "MiFID II/MiFIR /PRIIPs Regulation Impact Study: Effectiveness and Efficiency of New Regulations in the Context of Investor and Consumer Protection – A qualitative/empirical analysis" ([https://die-dk.de/media/files/Auswirkungsstudie\\_MiFID\\_II\\_Prof\\_Paul.pdf](https://die-dk.de/media/files/Auswirkungsstudie_MiFID_II_Prof_Paul.pdf)), 69.0 per cent. of clients said that they do not read the document. Due to the amount of the aggregate pre-contractual information provided to retail investors, there is a risk that investors are not able to absorb all the necessary information due to information overload. This can lead to suboptimal investment decisions.

Another survey conducted by DDV shows that the majority of investors rely on product information from sources other than the PRIIPs KID (e.g., media reports and marketing material). Only 15.3 per cent. of investors use the PRIIPs KID as a basis for their investment decision. This lack of value is particularly true in the case of investment advice where, although the KID is provided as mandatory information, the firms in Germany rely on other documents in order to provide the investor with the relevant information. In particular, the product information sheet (Produktinformationsblatt/PIB) or equivalent, which is mandatory under the German Securities Trading Act for non-PRIIPs products (shares and standard bonds) only, is commonly used also for PRIIPs. It presents the main opportunities, risks, costs and basic information of a financial product in a clear and transparent manner. At the initiative of the Germany Ministry of Consumer Protection, a template has been developed in 2009 which is widely used in the financial sector ever since and became (and remains as of date) the benchmark in terms of understandability and comprehensiveness of information provided to retail investors.

Such situation is not optimal and cannot remain unchanged in the future. This is why we believe that the general direction of the PRIIPs regime has to be thoroughly re-thought in the medium to long-term. For this purpose it is in our view quintessential to re-assess the importance of comparability and understandability with a stronger focus on understandability to lay the ground for a better use of PRIIPs KIDs by investors. This is also in line with the approach currently taken by the FCA in the UK and it would be worthwhile to question the European approach against this background for reasons of competitiveness of the European capital market.

As for specific aspects to be tackled, the problem concerns in particular, the performance scenarios as well as costs. In this respect, a review of the PRIIPs Regulation is necessary, as the requirements have to be improved. This is particularly important against the background of the major objective of the PRIIPs Regulation, which was and remains to improve investor protection and, in particular, to increase the transparency and comprehensibility of financial products.

One of our major concerns in this respect will be described in more detail under question 40 below.

## 3. Call for evidence

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### 3.1 General survey on the use of the KID

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#### Extract from the call for advice

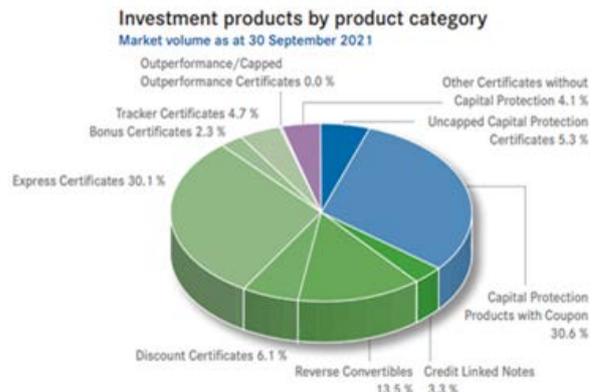
*A general survey on the use of the PRIIPs KID across the Union, including, to the extent feasible, evidence on:*

- *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.*

In terms of this general survey, it can be relevant to clarify that regarding the third bullet point in the mandate above, the ESAs understand that evidence is sought on the extent to which the information in the KID is used by persons advising on, or selling, PRIIPs separate from the obligation to provide the KID to the retail investor. This might include, for example, identifying if a product is suitable for the retail investor. For this topic, the ESAs would like to ask for feedback to the following questions:

**2. Do you have, or are you aware of the existence of, data on the number, type and market share of different types of PRIIPs? If you have such data, would you be in a position to share it with the ESAs?**

The members of DDV have issued the following products with the following shares of the market volume (investment products by product category as per 30 September 2021):



For the statistics, we have a volume of approximately 73 billion EUR in Germany (apart from some capital protection products, PRIIPs-KIDs are provided for all these products). (source: DDV market volume statistics, www.derivateverband.de, October 2021)

**3. In your position as product distributor or financial advisor, to what extent do you make use of KIDs to choose or compare between the products you offer to your clients? In case of trading online, does your platform offer an automatised tool that can help the retail investor in making comparisons among products, for instance using KIDs?**

In Germany, financial advisors do not use KIDs as much and prefer the use of the German product information sheet or equivalent. This is – inter alia – based on the fact that issuers have, in the process of producing a KID, greater freedom to choose different meaningful scenarios, which led to real added value for the investor. The client could see what amount they would receive if the underlying asset performed under different market conditions. With such an approach, the product-specific peculiarities can be taken into account, and the investor is able to understand potential performance and the functioning of the product in a comprehensible and balanced way.

It is beyond our knowledge whether clients who make their own investment decision refer to KIDs to do so. We are also not aware of any specific automatized tools on online trading platforms that can be used to compare products.

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

There are other sources of information available that provide more comprehensive information and that can also be better applied individually.

**5. In your experience, e.g. as a retail investor or association representing retail investors, to what extent are KIDs used by distributors or financial advisors to support the investment process? Is marketing material used instead or given greater emphasis?**

As pointed out under question 1 above, investors rarely base their investment decisions on KIDs.

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

Marketing material and KIDs are different kinds of documents used for investor information purposes. Their legal sources and objectives are different and hence they should not be compared with each other.

## 3.2 General survey on the operation of the comprehension alert

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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.*

For this topic, the ESAs would like to ask for feedback to the following questions:

**7. What are your experiences regarding the types of products that include a comprehension alert?**

For complex PRIIPs, a "comprehension alert" has to be included in the KID. As far as we are aware, all KIDs for PRIIPs contain a comprehension alert, as PRIIPs are always complex products within the meaning of Article 25 (4) MiFID II (as further specified in Article 57 of the MiFID II Delegated Regulation(EU) 2017/565) which defines "non-complex" (as opposed to "complex").

As due to their nature, almost all PRIIPs need to be labelled with a comprehension alert, the warning function for retail investors intended by the use of the comprehension alert is not only reduced, but even be rendered entirely redundant. The more PRIIPs are labelled with the comprehension alert, the less investor awareness is actually achieved. By contrast, UCITs – when in future falling under the scope of the PRIIPs Regulation – will not have to be labelled with a comprehension alert.

Furthermore, by adapting the concept "non-complex" in MiFID II, the European legislator did not intend to introduce a new general (regulatory) category of "simple products". Rather, it was introduced by MiFID II to reduce the MiFID regulatory requirements for investment firms – and not to establish, from a regulatory perspective, a distinct stand-alone category of "complex" investment products.

The question around complexity proves difficult and a quantitative and economic approach to the complexity of financial products may help shedding light on potential developments in the future. The level of investor protection in relation to a specific product required can only be determined cumulatively as a function of different factors. Among others, these factors include their relative degree of riskiness (including liquidity), degree of structuring, and transparency (understandability). This assessment is confirmed by several academic studies that, in recent years, have tried to capture crucial aspects of complexity. Each of these studies accounts for different combinations and weighting of factors (such as simplicity of the payoff formula, the underlying, and the risk profile, liquidity, and cost and fee structures). Some of these factors apply to different asset classes independent of their "wrapper", however familiar the latter might be. This view is

supported by a study presented by Christian Koziol, Philipp Roßmann, and Sebastian Weitz (Complexity of Financial Products: a Quantitative and Economic Approach, Tübingen 2018) , which proposes an economic approach for determining the complexity of financial instruments based on the notion of complexity from an investor's perspective, along with a method aligned with that notion. In their economic approach, the authors aim to avoid any subjective weightings of individual product characteristics. In their view, the existing MiFID II classification is not at all consistent with the study's results. According to the study, a classic discount certificate ("complex" according to MiFID II rules) would be less complex than an equity fund and much less complex than a life insurance policy. The least complex product is considered to be a 2-year German government bond (MiFID II: "non-complex"), a 10-year German government bond, however, would be more complex (MiFID II: "non-complex") than a DAX future (MiFID II: "complex"). A non-traded corporate bond is considered to be one of the most complex products (MiFID II: "non-complex").

In line with that and as early as in 2012, IOSCO was particularly interested in exploring the market for retail structured products to understand the drivers for both supply-side (i.e., issuer and distributor) behaviour and demand-side (i.e., investor) behaviour. With respect to distribution, IOSCO published its Final Report Suitability Requirements with respect to the Distribution of Complex Financial Products in January 2013, thereby promoting robust customer protection in connection with the distribution of complex financial products by intermediaries. The Final Report defined "complex financial products" broadly and inclusive of "structured investments". The concept underlying IOSCO's approach to complexity consisted in particular to not only focus on the complex structure of the financial products, but to also consider the retail customers' understanding. We therefore believe that the current definition of complexity should not be retained as a criterion for the question of a comprehension alert, as it can be counterproductive and misleading. Complexity should not be comprehensively determined at the level of the product category. Rather, the investors' conception of complexity should be put at the centre. Effective investor protection should focus on the comprehensibility and transparency of financial products. For the reasons stated above we would therefore argue that the comprehension alert should ideally be abolished.

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

No answer.

**9. What are your experiences regarding the extent to which retail investors take into account the inclusion of the comprehension alert?**

No answer.

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

No answer.

**11. What are your experiences regarding the extent to which financial advisors consider the comprehension alert?**

No answer.

### 3.3 Survey on the practical application of the rules

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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.*

Concerning this topic, the ESAs would like to ask for feedback to the following questions:

#### **12. For PRIIP manufactures or sellers:**

##### **12. a) Please describe the different types of costs incurred to comply with the PRIIPs Regulation.**

The following costs are usually incurred to comply with the PRIIPs Regulation (bearing in mind that these items relate to the total costs, they cannot be reasonably allocated to an individual issue nor can the individual costs be listed by amount and added together):

- front office staff to build industry specifications (structurers, sales, quants)
- IT staff to undertake necessary IT developments
- staff to test KID developments
- law firms
- translation firms
- centralized industry solutions/repositories for publishing the document (e.g. in RegXchange)

Any changes due to new Q&A, changes in the structure in the products or amendments to the provisions in place (e.g. RTS) may trigger further costs.

##### **12. b) Can you provide an estimate of the average costs per PRIIP of complying with the requirements of the PRIIPs Regulation? Where possible, please provide a breakdown between the main types of costs, e.g. manufacturing, reviewing, publishing, etc.**

For larger institutions, producing a KID for a more difficult structure followed by changes necessitating amendments of the KID in a larger scale (as described under (a)) can trigger costs of approximately EUR 1m. Having said this, it is important to bear in mind the interdependency between costs and the number of products. The total costs do not scale linearly, i.e. several costs are allocated per product. Consequently, if

the costs can be allocated to a higher number of products within the same template, the costs per KID go down significantly. The overall costs are also affected by the number of products (higher computation time etc.) but this effect is less pronounced.

**12. c) Can you provide an estimate of what proportion of the total costs for the product are represented by the costs of complying with the PRIIPs Regulation?**

As far as we are aware, most issuers at the moment do not pass on the cost for KIDs to end investors directly and the costs are covered from the above total cost of the product. However, it is difficult to assess whether the situation may become different if changes and amendments as described under (a) above necessitate more modifications, thereby increasing the costs to produce KIDs significantly. In the end, and as is usual on the market, the end client will – one way or another - bear the increase of costs.

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

For retail investment products, there seems to be a substantial degree of consistency across market from the manufacturers' side (notwithstanding certain differences stemming from lack of clarity in the RTS). We attribute this not least to the fact that trade associations, such as DDV, tried to promote consistency by providing templates or issued recommendations on a number of PRIIPs related topics.

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

In addition, some NCAs seem to apply the requirement to provide ex ante notification of the KIDs set out in Article 5(2) of the PRIIPs Regulation, which in itself results in an inconsistency.

The supervision of PRIIPs KIDs should benefit from a consistent approach of the provisions that are foreseen in the EU regulation. However, national regulators should define at national level the best way of complying with the EU regulations based on national markets' specificities.

## 3.4 Use of digital media

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### 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.*

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.

The PEPP Regulation[1] provides rules regarding the distribution of the PEPP KID either electronically or via another durable medium in Article 24. 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.

For PEPP KIDs provided in electronic format, the PEPP Regulation also allows for the layering of information (Article 28(4)). This means that detailed parts of the information can be presented through pop-ups or through links to accompanying layers. In general terms, layering allows the structure of the information to be presented in different layers of relevance: for example from the information “at a glance” that is essential for all audiences, to more detailed information being readily available in a subsequent layer for those interested, and so forth.

Concerning this topic, the ESAs would like to ask for feedback to the following questions:

[1] 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)

**14. Do you have or are you aware of the existence of data on the use of different media? If you have such data, would you be in a position to share it with the ESAs?**

No answer.

**15. What are your experiences as a product manufacturer or product distributor or financial advisor regarding the preferred media for retail investors to access or read the KID? Are there challenges for retail investors to receive the KID in their preferred media, such as due to a certain medium not being offered by the distributor?**

No answer.

**16. How do you as a retail investor, or association representing retail investors, prefer to receive or view the KID?**

No answer.

**17. What are your experiences regarding the preferred media for product distributors and financial advisors when using the KID?**

No answer.

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

When providing legally required information and documents – and this applies not only to KIDs – manufacturers and distributors prefer the electronic form for cost, efficiency and sustainability reasons. Consequently, paper-based information should be the exception and should be maintained only upon the client's request. In a recent survey conducted by DDV amongst its members, well over 50 per cent. of the product information was provided digitally (with only around 7 per cent. to use paper format).

In addition, it is of the utmost importance that the way pre-contractual disclosure documents are presented to the client is aligned. The fact that the MiFID II information (e.g., suitability report and ex-ante cost information) can be sent electronically to the investor, whereas the PRIIPs KID still needs to be provided to the investor in paper (default option) proves difficult. Therefore, the PRIIPs Regulation should be brought into line with the MiFID II provisions in this respect.

In addition, it is crucial that the content of the KID should be the same throughout different media.

On a side note, it seems to be the case that, in practice, all age groups of investors seem to have a preference to rely on finance portals to obtain the necessary information regarding their investments.

## 19. Do you think it would be appropriate to apply the approach taken in the PEPP Regulation 2019 /1238 (highlighted above) to the PRIIPs KID?

In principle, it would be positive if information that must already be provided under MiFID II would not have to be mentioned again in other legally required documents, such as the KIDs. The duplication of information could thereby be avoided.

On the other hand, layering, if presented via links, makes it more difficult for investors to obtain the relevant information at a glance in one document. A KID should provide investors with an overview of all the information that is necessary to understand the product.

We are therefore rather critical of layering in the context of KIDs, even more so as it could potentially result in an information overload, which goes against the objective of understandability.

## 3.5 Scope of the PRIIPs Regulation

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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.*

The points referred to Article (2) of the PRIIPs Regulation concern:

*(d) securities as referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC;*

*(e) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;*  
*(g) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.*

In 2019 the ESAs published a Supervisory Statement on the application of the scope of the PRIIPs Regulation to bonds (JC 2019 64). In this statement it was stated that:

*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 Regulation[1] to address packaged or wrapped products rather than assets which are held directly, to avoid any legal uncertainty on this point.*

Taking this Statement into account, the ESAs are interested in feedback on a number of additional issues besides those specified in the mandate from the Commission. Thus, concerning the topic of scope, the ESAs would like to ask the following questions:

[1] This is stated in recitals 6 and 7.

**20. Do you think that the scope of the PRIIPs Regulation should be extended to any of the products referred to in Article 2(2), points (d), (e) and (g)? Please explain your reasoning.**

We believe that, in principle, KIDs should be prepared in accordance with the PRIIPs Regulation for all products that qualify as PRIIPs in order to provide a level playing field for all market participants and products.

Against the background of the purpose of KIDs, we see no justification for exceptions, unless the investor has no individual choice due to national regulations, e.g. because he is obliged by law to purchase certain pension funds.

**21. Do you think that the scope of the PRIIPs Regulation should be changed with respect to other specific types of products and if so, how?**

As described in more detail under question 7 above, the question of whether products classify as “complex” or “non-complex” does not provide an appropriate basis for deciding about potential additional requirements for a subset of products nor should it be used for the decision on the scope of the PRIIPs Regulation.

We believe that it should be made clear in this review that the scope of application of the PRIIPs Regulation is limited to investment products and that products used to hedge risks are outside its scope. Hence, OTC derivatives should be excluded based on the fact that they are usually not considered to be investment products. In their Q&A, the ESAs have already determined that the statutory requirements do not fit these products and consequently made changes to the statutory content of the KIDs (ESAs Q&A on the PRIIPs Key Information Document (KID), JC 2017 49, Derivatives, Q 5). We therefore believe that the scope of the PRIIPs Regulation should be limited to investment products.

Furthermore, bonds that include a so-called “make-whole” are currently classified as PRIIPs, which is why an extensive KID must be prepared before selling them to retail investors and many issuers shy away from

this effort. The European Commission stated in recital 4 of the so-called MiFID II “quick fix” published in February this year that product governance requirements should not apply to bonds with no other embedded derivative than a make-whole clause which should be eligible for retail investors. With this in mind, it could be argued that it would make sense to adopt this regulatory relief from the MiFID II amendments also in the PRIIPs Regulation and, thus, exempt bonds with no other embedded derivatives than a make-whole clause from the PRIIPs Regulation.

Looking at the PRIIPs regime from a long-term perspective, it would be helpful to contemplate even a scope encompassing all financial instruments.

**22. Do you think changes should be made to specify more precisely which types of financial instruments fall within the scope of the PRIIPs Regulation? Please specify the amendments that you think are necessary to the Regulation.**

We believe that more generally, clarification would also be needed regarding the application of the PRIIPs Regulation to some bonds. Other than the exemption of OTC derivatives and bonds with no other embedded derivatives than a make-whole clause as explained under question 21, we do not see any further need to specify the scope of application of the PRIIPs Regulation.

In any case and as described in more detail above, we do not think that “simplicity” or “complexity” are appropriate characteristics for a specification of types of financial instruments that should fall within the scope of the PRIIPs Regulation at the moment.

**23. Do you have specific suggestions regarding how to ensure that the scope of the PRIIPs Regulation captures packaged or wrapped products that provide an indirect exposure to assets or reference values, rather than assets which are held directly?**

We do not see a need for adjustment.

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

DDV agrees with the statement. See also answer to question 22 above.

**25. Do you think that the definitions in the PRIIPs Regulation relating to the scope should take into account other elements or criteria, e.g. relating to the maturity of the product, or relating to a product only having a decumulation[1] objective, or where there is not active enrolment[2]?**

[1] For example an annuity.

[2] This might include, for example, employment based incentive schemes

We do not see a need for adjustment.

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

In principle, the restriction that a KID must only be prepared if a PRIIP is made available to retail investors is sufficient.

However, we would welcome a clarification to the extent that "making available" requires an active action

that is aimed at selling the product. In addition, financial instruments, which are explicitly not offered to retail clients, should also not be covered by the PRIIPs Regulation, i.e. such products should be excluded from its scope. This could be achieved by way of a regulatory guidance, for instance.

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

Although positive from the perspective of progressing towards “reasonable comparability” between product categories, it may be more suited to leave the development of product taxonomies up to the market practice as product types are constantly evolving. There are already longstanding, established taxonomies available, such as the German products classification provided by DDV on its website: [https://www.derivateverband.de/MediaLibrary/Document/Derivate-Liga\\_A3\\_2020\\_EN.pdf](https://www.derivateverband.de/MediaLibrary/Document/Derivate-Liga_A3_2020_EN.pdf). We would therefore argue that there is no need to establish another taxonomy by the regulator.

### 3.6 Differentiation between different types of PRIIPs

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Following a targeted consultation on PRIIPs towards the end of 2018, the ESAs’ Final Report published in February 2019 (JC 2019 6.2), which proceeded further work on a review of the PRIIPs Delegated Regulation, stated (page 14):

- *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.*

This aspect was considered during the review of the PRIIPs Delegated Regulation initiated in 2019, but this work was conducted within the constraints of the existing PRIIPs Regulation. In the context of reviewing the PRIIPs Regulation, consideration could be given to the following types of approaches:

- The development of broad product groupings or buckets of similar products. A more tailored approach could be taken for each of these groupings, with the aim to ensure the meaningfulness of the information and prioritising comparability within these groupings. This might also ease the comparability between the PRIIPs Regulation and sectoral legislation (such as MiFID, IDD) on certain disclosure requirements;
- A reduced degree of standardisation in the KID template;
- Provisions that would allow for supervisory authorities to grant exemptions or waivers from the requirements in duly justified cases.

**28. Do you think that the current degree of standardisation of the KID is detrimental to the proper understanding and comparison of certain types of PRIIPs? If so, which products are concerned?**

In principle, the high level of standardization of KIDs is very positive for investors, as it allows them to compare different products easily, subject to the considerations below.

The more discretion manufacturers are given in calculating the data shown (summary risk indicator, performance scenarios or product costs) or their placement in the KID (order, graphical presentation), the more difficult it is for investors to compare two products on the basis of the KIDs. In particular, the introduction of discretionary elements in relation to the risk assessment (e.g., the summary risk indicator) creates a significant source for potential divergences of PRIIPs KIDs due to subjective views and assessments of different manufacturers. It also renders products – potentially even within the same product category - less comparable and creates an additional source of inconsistency.

DDV is of the view that the concept of high standardization should be adhered to and discretionary elements should be eliminated as far as possible when drawing up the KIDs.

The question is, however, to what extent comparability should be prioritized, especially if it is detrimental to understandability. PRIIPs KIDs in their current standard seem to contain too many and too detailed elements, such as performance scenarios and cost tables causing an obstacle to comparability rather than facilitating it.

As long as the requirements for the presentation of performance scenarios and cost tables in the PRIIPs Regulation are not differentiated for products with the same features, but with different underlyings, the results - and that is what retail investors ultimately look for in the document - may be confusing and (in the absence of further explanations) difficult to understand for the retail investor. Consequently, the statement of the performance scenarios and cost tables may not always contribute to a better understanding of the product, since the comparability is only theoretical in the current context. In fact, performance scenarios and costs of two products with the same features, but different underlyings are less comparable.

In this context, we would like to point out that any endeavour to introduce the requirement to provide further information under the performance scenarios with the aim of enhancing the comprehensibility of KIDs seems counterproductive as more explanation (particularly if the explanatory notes allow discretion on the part of the manufacturer) will result in more confusion for retail investors and hence even less transparency. This, in turn, will have a negative impact on comprehensibility – contrary to the intention - and diminish investors' confidence in these products.

The assessment of the comparability of investment products should be aligned with the comprehensibility of these products. A more flexible approach to comparability (e.g., by accepting the comparability of products within specific product categories only) would promote comprehensibility, the latter being of higher importance. Comparison of different products can only be meaningful insofar as these products have comparable features. Otherwise, it may result in potentially misleading information.

The new PRIIPs RTS have changed significantly the content of the KID by amending the requirements on performance scenarios and cost tables of structured products. It is questionable whether these changes will have a positive effect on comparability.

**29. Do you think that greater differentiation based on the approaches highlighted above, is needed within the PRIIPs Regulation? If so what type of approach would you favour or do you have alternative suggestions?**

See answer to question 28. In addition, we would like to emphasize that greater value should be accorded to understandability than to comparability between different products. Comparability matters most within the same product category and should not be expanded artificially to different categories of products that, by their nature, cannot be compared due to their different features. In other words, “strong comparability” should

be the ultimate goal within a product category, while “reasonable comparability” and a level playing field would make more sense between product categories.

**30. Do you have suggestions for how a product grouping or product buckets could be defined?**

See answers to questions 27 and 28.

## 3.7 Complexity and readability of the KID

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Taking into account the views previously expressed by some stakeholders that the information in the KID is overly complex and contributes towards an information overload for the retail investor, the ESAs would like to ask for suggestions on how the KID could be improved in this respect.

There can also be a link between this issue and the use of techniques such as layering as referred to above in the context of the digital KID (see Section 3.4), as well as other design techniques, such as the inclusion of visual icons or dashboards at the top of documents[1].

[1] Dashboards can include the most essential information at the top of the document. This is the approach taken, for example, for the PEPP KID - “PEPP at a glance” in Annex I of PEPP Delegated Regulation 2021 /473 point 4 and the template in part II.

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

In our view, the layout and order of the information in the KIDs do not pose a problem for the comprehensibility and readability of the KIDs. In this respect, we do not see any compelling need for adjustment.

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

We believe that the currently prescribed criteria for the structure, the format and the presentation of the KID are sufficient to meet the objectives of the PRIIPs Regulation. However, the limitation to three pages creates an unnecessary pressure on market participant. Any changes to format or structures would have to be weighed against better understandability. Ultimately, it should be questioned if any further modifications will result in a higher acceptance by investors. Without such empirical evidence, we would suggest to refrain from changes that do not show a clear benefit. This is particularly true as a previous consumer testing was inconclusive in this respect.

## 3.8 Performance scenarios and past performance

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In the ESAs’ draft regulatory technical standards (RTS) to amend the PRIIPs Delegated Regulation submitted to the Commission in February 2021[1] (and adopted by the Commission on 7 September 2021 [2]), the ESAs included a proposed new requirement for certain types of investment funds and insurance-

based investment products to publish information on the past performance of the product and refer to this within the KID. This approach was taken so that the availability of this information would be known, and the information would be published in a standardised and comparable format.

However, the ESAs also stated in the Final Report[3] accompanying the RTS that (on page 4):

*the ESAs would still recommend, as a preferred approach, to include past performance information within the main contents of the KID on the basis that it is key information to inform retail investors about the risk-reward profile of certain types of PRIIPs. Since it has been argued that the intention of the co-legislators was for performance scenarios to be shown instead of past performance, it is understood that a targeted amendment to Article 8 of the PRIIPs Regulation would be needed to allow for this. A consequential amendment is also considered necessary in this case to allow the 3 page limit (in Article 6(4)) to be exceeded to 4 pages where past performance information would be included in the KID;*

Besides the issue of past performance, the ESAs' work under the empowerment in Article 8(5) regarding the methodology underpinning the performance scenarios has raised significant challenges. Since the ESAs first started to develop these methodologies from 2014 onwards, it has proved very difficult to design appropriate performance scenarios for the different types of products included within the scope of the PRIIPs Regulation that would allow for appropriate comparisons between products, avoid the risk of generating unrealistic expectations amongst retail investors and be understandable to the average retail investor. In particular, no academic consensus has been reached on how to develop common performance scenarios that would be equally appropriate for all types of PRIIPs, proving the inherent difficulty of such an approach.

In this context, the ESAs would like to ask for feedback on:

[1] EIOPA's Board of Supervisors agrees on changes to the PRIIPs key information document | Eiopa (europa.eu).

[2] Implementing and delegated acts | European Commission (europa.eu)

[3] JC 2020 66 (30 June 2020)

### **33. Do you agree with the ESAs' assessment in the Final Report (JC 2020 66) regarding the treatment of past performance?**

As pointed out before, any changes made to the current approach need to be weighed against potential costs involved with the adoption of new criteria and potential benefits. In the absence of clear benefits, we believe that changes are not helpful.

### **34. Would you suggest changes to the requirement in Article 8(3)(d)(iii) of the PRIIPs Regulation concerning the information on potential future performance, and if so what would you specifically change in the Regulation?**

We do not consider historical performance used as growth rate in the performance scenario to be a valuable basis. During the various consultations of the RTS, an improved approach regarding the expected return ("growth rate") within the performance scenario simulation was included in the consultation paper. Unfortunately, none of the proposed alternatives which proved to be methodologically solid and practicable and which would create better performance scenarios, was considered nor adopted.

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

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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):

*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.*

One of the proposals in the Consultation Paper was to introduce a differentiated treatment for the ‘most commonly selected investment options’ (page 52). In the final draft RTS following the consultation, the proposals relating to the most commonly selected investment options were not included taking into account various implementation challenges raised by respondents to the public consultation.

However, the ESAs introduced 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. It was considered that these changes would result in material improvements to the current KID. At the same time, 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 the Final Report (JC 2020 66), the ESAs also stated at that stage 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.

As part of the May 2021 consultation from the Commission on the Retail Investment Strategy, feedback was also requested on the approach for MOPs to require a single, tailor-made KID, reflecting the preferred underlying investment options of each investor, to be provided.

In this context, the ESAs would like to ask for feedback on the following questions regarding potential alternative approaches for MOPs that might require a change of the PRIIPs Regulation:

**35. Would you be in favour of requiring a KID to be prepared for each investment option (in accordance with 10(a) of the PRIIPs Delegated Regulation) in all cases, i.e. for all products and for all investment options[1]? What issues or challenges might result from this approach?**

[1] This approach assumes complete investment in a single investment option and requires the KID to include all costs.

No answer

**36. Would you be in favour of requiring an approach involving a general product information document (along the lines of a generic KID) and a separate specific information document for each investment option, but which avoids the use of cost ranges, such as either:**

- **A specific information document is provided on each investment option, which would include inter alia all the costs of the product, and a generic KID focusing more on the functioning of the product and which does not include inter alia specific information on costs?; or**
- **The costs of the insurance contract or wrapper would be provided in a generic KID (as a single figure) and the costs of the underlying investment option (as a single figure) would be provided in the specific information document?**

**What issues or challenges might result from these approaches?**

No answer

**37. Do you see benefits in an approach where KIDs are prepared for certain investment profiles or standard allocations between different investment options, or for the most commonly selected options? In this case, what type of information could be provided regarding other investment options?**

No answer

**38. Do you have any other comments on the preferred approach for MOPs and or suggestions for changes to the requirements for MOPs in the PRIIPs Regulation?**

No answer

### **3.10 Alignment between the information on costs in the PRIIPs KID and other disclosures**

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In the final draft RTS amending the PRIIPs Delegated Regulation submitted to the Commission in February 2021 (and adopted by the Commission on 7 September 2021), the ESAs sought to introduce changes to the way that cost information is presented in the KID, in particular for non-insurance packaged retail investment products (PRIIPs)[1]. One of the aims of these changes is to achieve a better alignment with disclosure requirements in MiFID and IDD.

At the same time, the ESAs have received representations from stakeholders that there might still be inconsistencies or misalignment between the PRIIPs KID and disclosure requirements in other legislative frameworks. This issue is also related to the issue of appropriate differentiation between different types of PRIIPs (see Section 3.7).

Since the issue of consistency between different disclosure requirements for retail investment products is also addressed in the calls for advice to ESMA and EIOPA, the ESAs will, in particular, coordinate the work on this aspect, and consider the appropriate mandate within which to address any issues that arise.

[1] As defined in point (1) of Article 4 of the PRIIPs Regulation

**39. Taking into account the proposals in the ESAs' final draft RTS, do you consider that there are still other inconsistencies that need to be addressed regarding the information on costs in the KID and information disclosed according to other retail investor protection frameworks?**

There are, in particular, diverging cost disclosure regimes under PRIIPs and MiFID II. Furthermore, the Prospectus Regulation equally provides for the disclosure of costs in the summaries. In this case, the costs either have to be disclosed according to the PRIIPs Regulation or according to MiFID II. From the investor's point of view, this is not ideal, as it means that different costs are mentioned in different disclosure documents. This obstructs the understanding of financial products by retail investors and contributes to information overload, which undermines the objective of transparency and understandability.

With regard to the calculation methods of costs or cost components to be disclosed, there are inconsistencies between the two sets of regulations under MiFID and PRIIPs that hinder the comprehensibility of cost disclosure information provided to the client. Therefore, a synchronization of the MiFID II requirements (entry costs – upfront, ongoing costs – running fees per annum, and exit costs) with the requirements of the PRIIPs Regulation (Reduction in Yield, i.e., the impact of raw costs on annualized return) should be sought. In connection with the harmonization of the calculation methods, a uniform model for cost disclosure would also be desirable. This would eliminate the current legal uncertainties, improve comprehensibility, and increase cross-product comparability for investors.

DDV considers the alignment of the calculation methods and the reporting of costs to be of high priority. Since the reporting of costs under MiFID II is more comprehensive and includes not only the costs of the financial instrument but also the costs of the service, the MiFID II cost information should form the basis for an alignment vis-à-vis product costs. It should also be evaluated whether the MiFID cost information should be the only source in order to avoid misunderstanding for the client and reducing unnecessary duplication.

MiFID II has also established a comprehensive cost disclosure regime, including a requirement to provide clients with appropriate information on costs in relation to financial products as well as investment and ancillary services in a timely manner (i.e., before any transaction is concluded and on an annual basis, in certain cases).

### 3.11 Other issues

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**40. Do you think that other changes should be made to the PRIIPs Regulation? Please justify your response.**

As mentioned under question 1, we would like to describe one of our major concerns in more detail - the correction of incomprehensible presentations of scenarios for performance and cost information in KIDs: The presentation of different scenarios currently provided for the illustration of the performance within the scope of the KID does not fulfil its purpose in any respect and thus represents one of the biggest problems in connection with the implementation of the PRIIPs Regulation. Both the presentation and, above all, the prescribed calculation methodology, lead to results that can be meaningless and are not comprehensible for retail investors. The market watchdog team of the consumer centers has also used practical examples to show that much of the content of the information sheets is highly problematic from the consumer's point of view. It has been shown that the methodology specified down to the last detail across different products in the scope of application of the PRIIPs Regulation is not practice oriented. In particular, the fact that the

scenarios are to be determined based on the historical performance of the underlying leads to improper results in practice for some products.

An alternative approach was chosen in the case of the German product information sheets. Here, there was greater freedom to choose different meaningful scenarios, which led to real added value for the investor. The client could see what amount they would receive if the underlying asset performed under different market conditions. With such an approach, the product-specific peculiarities could and should be taken into account, and the investor will be able to understand potential performance and the functioning of the product in a comprehensible and balanced way.

If the EU legislator is of the opinion that there should be no fundamental departure from the presentation and calculation currently required by the PRIIPs Regulation, we believe that at least the requirement for the calculation of interim scenarios should be waived. A theoretically founded, practically implementable, and consistent approach would greatly assist the performance scenarios providing value.

On a side note, with regard to performance scenarios, it can be noted that there were positive experiences in Germany with deterministic what-if scenarios as they have been used in the previous national product information sheets for structured products.

The calculation and presentation of costs are also not purposeful. The divergence between the calculation of costs according to MiFID II and the prescribed methodology according to the PRIIPs Regulation is a particular problem that leads to incomprehensibility for retail investors. A synchronization of both sets of regulations is urgently necessary so that, for example, the ex-ante cost statement according to MiFID II can correspond to the cost statement in the KID.

DDV wishes to stress that any changes to the way retail financial product distribution is regulated in the EU and any change to the PRIIPs level 1 or level 2 text strictly need to be based on a holistic, analytical and evidence-based examination of all existing relevant regulatory mechanisms potentially affected by such a change.

This includes, but is likely not limited to, looking for adverse or undesirable correlations between the new provisions on PRIIP content requirements and existing (or future) customer categorization rules, MiFID target market requirements, and MiFID suitability and appropriateness tests.

As we pointed out before, we believe that overall, any changes to the PRIIPs regime should be weighed against potential burdens and benefits.

DDV strongly advocates for the elimination of the manifold discretionary elements and calculation rules for category 2 products. Instead, the adjusted calculation method with unified growth rate based on bootstrap for categories 1 – 3 should be used. Furthermore, we believe that the adjustment of autocall presentation requirements to the previous market standard would be helpful, as this would ensure better comparability.

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