

## Insurance Europe response to the ESA's joint consultation paper concerning amendments to the PRIIPs KID

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Referring to:	European Supervisory Authorities' (ESAs) joint consultation paper concerning amendments to the Packaged Retail and Insurance-based Investment Products (PRIIPs) Key Information Document (KID) (JC 2018 60)		
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### General comments

Insurance Europe welcomes the opportunity to comment on the proposed changes to the RTS. However, we have serious concerns with the 'quick-fix' approach taken in the current consultation. It is vital that any new measures address the underlying problems with the PRIIPs KID and do not attempt to find superficial and ineffective solutions to these fundamental problems. Insurance Europe request that the fundamental changes required to address the issues with performance scenarios are only considered as part of the formal review. Such amendments are central to the objective of the Regulation and as such require thorough impact assessment and proper consumer testing to ensure that consumers are provided with meaningful information. As the PRIIPs Regulation has only been in force less than a year, we feel the ESAs need to conduct a more well-considered and better evidenced approach when proposing amendments which could lead to deterioration of information provided to consumers. It needs to be evidenced that the consumer will benefit from such proposals, in order to justify the significant systems changes and compliance costs for industry.

It is clear that the proposed solutions for performance scenarios set out in this consultation are only an interim measure and that the performance scenarios will need to be fully revised as part of the Article 33 review of the PRIIPs Regulation ('formal PRIIPs review'). An interim measure which would incur additional compliance cost without achieving any added value for consumers is an entirely unsatisfactory approach to the issues at hand. There is minimal value to consumers in repeatedly changing the presentation of the PRIIPs KID. This would increase confusion and also risks devaluing the KID as repeated changes will cause consumers to question the value of the information presented to them. The proposed changes to the RTS would mean insurers face significant costs in altering PRIIPs KIDs by 2020 and will face costs again implementing changes that result from the formal PRIIPs review. It is also not clear how the formal review could fully consider the impact of any interim changes, as these would have only just been implemented when work on the review began.

We understand that the ESAs have been restricted in the ambition of the solutions proposed in the consultation as the potential end of the UCITS exemption in 2019 would mean that any changes to the RTS should be adopted



by the European Parliament by March 2019. As an end to the UCITS exemption looks increasingly unlikely, as suggested by Vice-President Valdis Dombrovskis during the exchange of views before the Committee on Economic and Monetary Affairs of the European Parliament on 29 November 2018, there seems to be no reason to rush-through these measures. If a satisfactory long-term solution to problems with the performance scenarios cannot be found within this timeframe it is better that these issues are dealt with as part of the formal PRIIPs review. To do otherwise would undermine the objective of the regulation to provide consumers with information that is accurate, fair, clear and not misleading. Insurance Europe stand ready to collaborate with the ESAs in 2019 to find adequate alternatives.

Finally, we would like to make clear that our response only addresses the issues with the RTS raised by the ESAs in the consultation paper. The short period of time does not enable us to comment on additional issues with the RTS. Therefore, we urge the ESAs to conduct another consultation before the formal review so that a broader range of issues can be considered.

*1. Do you agree that information on past performance should be included in the KID where it is available?*

The use of past performance data alongside forward-looking performance scenarios is potentially confusing to consumers and is not a solution to the current problems with the PRIIPs KID. Any problems with the current PRIIPs performance scenarios need to be addressed directly, not through quick-fix solutions. The addition of more past performance-based data will not assist consumers in understanding the performance scenarios.

Although information on past performance is anchored in actual historical data, the inclusion of such information alongside forward-looking scenarios would be misleading and will increase confusion for consumers. In some cases, past performance data will appear to validate the overall picture presented by the forward-looking scenarios, as where there has been a period of unusually good market performance this is reflected in both measures. This compounds the problems with the current methodology rather than giving consumers a clear indication that the forward-looking methodology cannot be relied upon. The possible use of a benchmark alongside past performance data would be even more confusing and it is irrelevant to the main objective of the KID (informing and comparing the product with other products).

The insurance industry is concerned that simply adding more information while not addressing the underlying flaws with the performance scenarios will confuse consumers and overload them with information. As noted by the ESAs in the costs and benefits analysis, it is also not clear how this will fit with the requirement that PRIIPs KIDs do not exceed 3 pages in length. For some manufacturers it will be almost impossible to add additional information within the 3-page limit.

*2. Are there challenges to include past performance information for certain types of PRIIPs?*

In several markets, insurers anticipate problems with providing past performance data for certain insurance-based investment products in particular products with a non-negligible mandatory biometric element (such as death cover) and products with guarantees in cases where past performance is not relevant or could mislead consumers. The performance of these products is driven by the promised future guarantee (which does not depend on the past) and biometric performance respectively rather than the market performance of the underlying assets. The use of historical data or simulated past performance data for some of these products is potentially very misleading. This kind of simulated data cannot reflect other factors influencing the performance of the product, the volatility of the product, or the overall features of the product. It can also not be used to compare IBIPs with other investment products which don't offer the same features.

*3. Do you agree that it is appropriate for this information on past performance to be based on the approach currently used in the KII? If not, please explain your reasons and if an alternative presentation would be more appropriate and for which types of PRIIPs?*

If past performance is to be used for certain products, there is value in maintaining the same approach as taken in UCITS as this is already familiar to retail investors, and this approach has not been called into question by those currently using it. However, further consideration of this approach would be needed as part of the formal PRIIPs review as it is not yet clear whether the approach taken in UCITS can be replicated for all products. For certain products, including those with biometric protection or guarantees, this approach is unlikely to present meaningful information to consumers. This is a fundamental issue in the presentation of performance to consumers and should not be addressed without thorough assessment and consumer testing. It is not appropriate to make changes of this nature as part of this expedited consultation.

*4. Do you think that information on simulated past performance should be included in the KID where actual past performance is not available? If not, please explain your reasons.*

At this stage, it is not clear that there would be a benefit to consumers in including simulated past performance, or how such data would be created. If such an approach was to be taken, the methodology would need to be subject to thorough consumer testing. This would need to begin by assessing whether and more importantly how consumers understand simulated past performance. Consumers should be made aware that the values are not real and be provided with explanation of how the simulation was achieved in order to assess the level of consumer understanding. It will not be possible to fully assess the usefulness of this kind of presentation within the short timeframe envisaged by the ESAs and so work on this issue should be delayed until the formal PRIIPs review.

At this stage, we consider simulated past performance is likely to be misleading for consumers and will create technical difficulties. Some consumers would be unlikely to understand what simulated past performance stands for, or to reconcile the difference between the figures reported and the actual performance of the product.

*5. If you think that information on simulated past performance should be included in the KID, what approach do you think should be used to simulate the past performance, and how should this be presented in the KID?*

As detailed above this would be a fundamental departure from the current presentation of performance and as such, any new methodology would need to be subject to thorough consumer testing. This should be carried out as part of the formal PRIIPs review, not within this 'quick-fix' timeframe.

*6. Do you consider these amendments to the narrative explanations to be an improvement on the current performance scenario approach?*

We welcome that the ESAs are considering how they can improve the narratives. The proposed revisions to the narrative explanations may be of some value to consumers but cannot solve the fundamental issues with the current performance scenarios. In markets where national supervisors have already indicated that manufacturers may add additional narrative explanations to highlight shortcomings in the methodology the impact on consumers has been minimal. Initial experiences have suggested that consumers are still drawn primarily to the numbers rather than the accompanying text. Furthermore, any added value of such an explanation is reduced given the limited scope of narratives proposed by the ESAs in this consultation when compared with those permitted nationally.

On this basis the insurance industry does not believe the proposed amendments to the RTS would be an improvement on the current performance scenario approach given the fact the fundamental issue – the

methodology used for calculating the performance scenarios - would remain unamended and proposed narratives do not go far enough in explaining inaccuracies.

The insurance industry would be supportive of well-considered, consumer tested changes to the RTS which would offer added value to consumers. However, it would be difficult for insurers to justify significantly increased compliance cost to implement minimal and ineffective changes to level 2 legislative requirements when it is clear that fundamental issues will remain unchanged. Again we request any changes to the RTS only be made as part of the formal PRIIPs review, we do not believe it will be to the benefit of consumers if KIDs are revised numerous times within a short period of time, as this will only increase confusion.

Insurance Europe suggest a more flexible approach may be to implement interim changes via Q&A as this approach would allow manufacturers to alter wording where they deem necessary but would not require all KIDs to be recalled and amended for minimal gain to consumers.

We also note that in the proposed paragraph (p16): This table indicates how your investment could perform over the next [recommended holding period] years in different market circumstances, assuming that you invest EUR [...] [per year], references Euro. Should changes be introduced via Q&A this would need to read "your money" as not all countries use the Euro.

*7. Do you have any comments on the analysis set out in this Section of other possible options to improve the future performance scenarios?*

We agree with the ESAs' assessment that the use of scenarios anchored in the risk-free rate of return would not provide meaningful information to consumers, in particular on longer term products. Risk-free measures are a mathematical tool used to price derivatives. It is an artificial tool since the risk-neutral world is easier for the calculus. However, the values of performance scenarios obtained this way have no meaning in the real world and are, therefore, useless for consumers. Consumers literally live in a "real world scenario" not a risk free one. Furthermore, the proposed approach would not take into account the potential risk premium of products and cannot be accurately applied to products other than 'vanilla' investment products. For more complex or structured products this methodology would result in very inaccurate projections, since it does not take into account the correlation between risks and rewards.

Showing only two performance scenarios could potentially be misleading for consumers. They might think that these are the upper and the lower boundary of a product. Furthermore, the stress scenario uses a different methodology for the calculation based on very short data intervals. This means that this scenario is not very representative. In some cases it lies above other scenarios and could even lie above the optimistic scenario if the product performed badly. In this case the range does not make sense. There may be some merit in showing returns in a modified table or graph, however this would need to be considered further to assess consumer reactions to such a presentation and to establish which two scenarios should be included.

We also agree with the ESAs assessment that the use of an extended period of past performance as the basis of the forward-looking calculations would result in an unreasonably high compliance burden for minimal gain to consumers. There is no time period which would produce accurate results for all products. We believe the use of past performance data projected into the future is fundamentally flawed regardless of the timeframe used. It is also not clear how this would interact with the current minimum historical return period for Category 2 PRIIPs which is currently set at 2 years (where daily prices are available). Extending this period would result in the increased reliance on benchmarks, rather than actual data. We don't believe this is in the interests of consumers.

*8. Do you have any views on how the presentation of the performance scenarios could otherwise be improved?*

In addition to the specific amendments proposed by the ESAs, it should also be acknowledged that there are some products currently considered to be in scope of PRIIPs for which the use of performance information

(whether forward looking or past performance) will never be a useful indicator to consumers. In particular the presentation of the 'performance' of an immediate annuity or a funeral cover product is fundamentally misleading to consumers. These products are not bought as an investment and so presenting suggested returns to consumers is unhelpful. It is also very difficult within the current methodology, or through the use of past performance, to calculate information that accurately captures the biometric features of the product. For these products, biometric cover rather than market performance is the main factor in the value to the consumer.

Moreover, we would question whether these products should be in scope of PRIIPs at all, as the aim of this type of product is not to make an investment but to cover a biometric risk.

*9. Do you agree with the proposals described in this section?*

We agree that the issues in this section may need to be addressed but would suggest that they are considered more thoroughly as part of the formal PRIIPs review.

We welcome the introduction of a formula for the calculation of the MRM for products with regular premium. In some markets the regular premium is the prevailing type of product and currently there is a lack of clarity on how to calculate the MRM for these products. However, at this stage it is not clear whether the solution proposed on the market risk measure will be of benefit. There is a possibility that the suggested amendments might not capture the actual risk of such products, since replacing "VaR\_RETURNSPACE" in the formula in Point 13 by "T·r" implies that the entire investment is done at time = 0 and held until time = T which is not always the case. We believe that the ESAs should provide full details so that it is clear how it should be applied by manufacturers.

Before making any changes, the ESAs should carry out a full assessment of the new methodology and provide full guidance on how changes are to be applied. In certain markets insurers have reported that they see no need to introduce a specific methodology as the current approach can be applied to all products.

There are also potential advantages in use of an extended number of characters to explain the limitations of SRI / the performance fee. However it may in fact be more helpful if the ESAs could indicate a range of different statements to be included in this section, in order to ensure that all manufacturers abide to the same standard. This would need further assessment before deciding on a final approach.

We agree with the ESAs assessment that the current costs methodology is not ideal for products with negative or low moderate performance, but have initial reservations with the proposed approach. A fuller assessment of how to balance comparability between products with the overall coherence of the PRIIPs KID is needed before any changes are made.

*10. Do you have any comments on the proposed approaches in relation to the analysis and proposals in this section?*

As an end to the UCITS exemption looks increasingly unlikely, we do not see any need to introduce corresponding changes to the PRIIPs RTS at this time. Provisions regarding UCITS and relevant non-UCITS funds as underlying investment options of a MOP in Articles 12, 13 and 14 of the PRIIPs Delegated Regulation should remain as they are.

However, the extension of the UCITS exemption does necessitate a technical amendment to Article 18 of the PRIIPs RTS. The possibility for insurance companies to produce a generic KID and to provide the information for each of the underlying option through the existing KIIDs must be extended at least until UCITS funds are obliged to apply the PRIIPs Regulation. A change of the date in Article 18 of the PRIIPs RTS is urgently needed to ensure the current derogation does not time out in 2019.

11. *Do you have any comments on the preliminary assessment of costs of benefits?*

We welcome the ESAs acknowledgement that any changes to the PRIIPs KID will result in significant costs for PRIIPs manufacturers. These costs will be higher where changes necessitate the gathering of new data or changing internal processes to take into account changes in methodology. However, even cosmetic changes to the KID, including ostensibly simple wording changes, will result in high compliance costs.

We disagree with the ESAs assessment that the requirement to review the KID annually means that there are no significant additional costs to making changes to the KID at this stage. Any change to the PRIIPs KID results in high compliance costs as the result of the internal measures taken by insurers to ensure changes are properly implemented.

12. *Are you able to provide information on the costs of including information on past performance for different types of PRIIPs?*

Adding past performance to the PRIIPs KID would have some very significant implications for the production of KIDs. It would be necessary to build past performance for underlying products that do not have any (new products, structured products, etc.). We also would have to address the impacts on other KID elements (impact of costs on past or future performance). We therefore believe that the costs of implementing this new approach would be almost equivalent to those related to the implementation of the whole PRIIPs regulation in 2018. Changes to the performance scenarios should be considered only in the framework of a comprehensive overhaul of the KID not as additional information added in the interim.

13. *Are there significant benefits or costs you are aware of that have not been addressed?*

If the PRIIPs methodology is changed too often, consumers may lose trust in the information contained in the PRIIPs KID. We urge the ESAs not to introduce any interim solutions and encourage the ESAs to conduct an in-depth review at a later stage that is preceded by a consumer testing and thorough consultations with expert groups and stakeholders.

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