3.1 General survey on the use of the KID

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 organization and why the topics covered by this call for evidence are relevant for you/your organization.**

The PRIIPs regulatory framework provides a comprehensive set of rules ensuring an excellent world-class standards level of protection to investor. It creates notably transparency of the key features of an investment, while product governance requirements ensure that the products are distributed to the proper audience.

A far as the Italian market of structured products is concerned, historically a very low number of investor complaints has been registered in connection with PRIIPs in general and with certificates/structured products (**SPs**) in particular.

As far as SPs are concerned, ACEPI's experience is that the currently applicable RTS of 2017 have met their objectives and are overall functioning well, except for the reduction in yield (RIY) which was a concept difficult to explain to distribution networks.

The changes to the 2017 RTS for SPs in the area of KID scenario, autocallables products, and Category 2 (linear SP KID) were unjustified, unnecessary and will lead to worse outcomes for all parties.

For SPs, ACEPI's members experience of KIDs since 2018 tells us that the revised RTS adopted by the EU Commission on 7 September 2021 will likely lead to:

1) more unclear KID scenarios than currently, specifically for autocallables (which were not put forward for consumer testing neither sufficient consultation with experts);
2) a substantial cost of implementation for manufacturers, distributors and KID providers companies;
3) a need to train distribution network to digest these changes.

ACEPI replied to the EU Commission's consultation on the Retail Investment Strategy and wishes to underline that PRIIPs rules currently in place allow retail investors to get adequate and reliable information about the products. Consequently any future change of the way the retail distribution of financial products is being governed in the EU, has to be supported by a stronger analytical evidence of the benefits of the changes, and must also be supported by consumer testing and better cooperation with industry experts.

Overall, ACEPI is concerned about the too frequent changes of the PRIIPs regime (every 3/4 years), which plays against the credibility of the documents and market efficiency.

In light of the too frequent changes occurred to the PRIIPs RTS , ACEPI would recommend that, once the revised RTS dated 7 September 2021 become applicable, no further material modification to this regime is made for at least 8 to 9 years.

Therefore any change to Level 1 PRIIPs Regulation should be carefully studied and not rushed in the form of quick fixes. In this context it should include:

(i) an assessment of unwanted correlations with the MIFID target market, and the MIFID suitability tests;
(ii) robust consumer testing based on real samples of KIDs rather than hypothetical questions;
(iii) a more pro-active listening of technical experts from manufacturers who have implemented the requirements and faced questions/issues from distributors and investors.

Furthermore, more consideration should be given on the implementation timeline, to build specifications, undertake necessary IT developments, test them, and train the distributors to the new formats of KID.

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?**

For SPs in Italy please refer to ACEPI's website https://acepi.it/en/content/data-and-statistics, a reliable source of market volumes. For countries other than Italy, please refer to SRP.com, which ESMA already has access too.

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?**

Regarding trading on line, ACEPI believe that retail investors are adequately protected when buying on-line on the secondary market through duly authorised investment firms' digital trading platform, to the extent relevant products fall under the scope of PRIIPs regulation.

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?**

The analysis of distribution of investment products is made by the distributors in accordance with their product governance as well as internal policies and procedures in order to properly select and identify the investment products suitable for their clients.

The distributors select the list of manufacturers and the list of investment products issued by these manufactures on the basis of specific parameters consistent with those adopted within their suitability procedures, which can be provided both by external sources (included the EMT flow of information provided by manufacturers) and internal sources.

In accordance with the scope of PRIIPs Regulation, KID is used by the distributors to provide investors with information regarding the specific investment product they want to buy or subscribe in order to support their investment decisions, but is not proposed as a way to compare different investment products.

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 far as we are aware marketing material is not used by distributor in substitution of KID and is given a different emphasis, not a greater one, which is a consequence of its different nature.

Not only KID purposes are very different from those relating to marketing materials but also content and format are generally quite different.

The KID is a regulatory document aimed not only at describing but also at **comparing products within one category (e.g., SPs), using a unique set of metrics such as risk indicator, scenarios analysis and costs table calculation**.

Marketing materials provide information on aspects that are not, and cannot be, covered in a KID: the pros/cons on the product, the operational information on how to subscribe, further simulations, pie-charts explaining the index compositions, explanations on the underlying (e.g., index rules, basket composition, multi-asset underlyings), market aspects which the product is meant to respond to, or tax implications.

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?**

KID and marketing material are not, and should not, be comparable with each other and be put on the same level under any circumstances.

Without prejudice to the above, one of the most striking difference is form and format: marketing material can take many different forms.
Also, marketing material do not purport to be "complete" i.e. to provide all key product information and in general may well draw attention to certain specific features of a product. This cannot be considered as a misleading feature of the marketing material insofar as the presentation is balanced, even if not exhaustive.

In addition, marketing material have to comply **with requirements originating from different sources, other than PRIIPs Regulation, for instance most notably suitability tests under MiFID, or national competent authority requirements,** as it is the case in Italy.

More generally, the KID remains a formalised document, within which it is not permissible to provide additional detailed information. The KID alone cannot (and should not) fulfil all informational needs of investors, as it must be read in conjunction with the relevant documentation (i.e., Prospectus, Final Terms, etc.).

ACEPI is of the opinion that the current three-page format of the KID should remain in place and unchanged in the content and the order of section, because it is overall working properly. Conciseness is key to ensure the document is read.

3.2 General survey on the operation of the comprehension alert

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

ACEPI recommends to abolish the comprehension alert, because it does not bring actual added value to investors.

This is also because the vast majority of all KIDs carry this alert, being considered "complex products" under MiFID, and therefore it is unlikely that investors give particular attention to such overused alert.

However, if the comprehension is kept, we wish to keep the current rules and format to display it.

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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?

Generally, investors will focus on product risks (SRI), costs table and scenarios, as well as issuer credit rating. If investors have questions on the product features, or anything that is difficult to understand, they usually seek help from their intermediaries/advisors.

That is why the comprehension alert brings little to no value.

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

Not applicable.

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

Financial advisors do not actually need such alert and they focus on other features of the product/KID, for the purposes of the test and requirements under MIFID II.

Furthermore, the Italian Financial Services Authority (CONSOB) introduced additional requirements to the intermediaries in distributing “complex products” to retail investors that must be verified by the distributors, which go far beyond such alert.

However, if the comprehension is kept, we wish to keep the current rules and format to display it.

3.3 Survey on the practical application of the rules

12. For PRIIP manufacturers or sellers:

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

Type of costs are:

Project costs (incurred at each change of rules/RTS)

1-front office staff to build industry specifications (Structurers, Sales, Quants) and attend industry forum such as ACEPI, EUSIPA, Findatex, EFAMA, Insurance Europe etc.

2-IT staff to undertake necessary IT developments,

3-contractors and front office staff to test KID developments,

4-training the distributors to the new format of KID,

5-Legal assessment on impacts,

6-Translations.

7-update of issuer website/s,

8-investment in centralized industry solutions/repositories for publishing the document, and the meta-data feed (e.g. in RegXchange),

9-compliance teams for monitoring quality of KIDs.

Running costs (incurred as long as the regime in place)

10-front office and legal staff to follow changes to RTS and reply to consultations,

11-operations team to maintain the production tools,

12-potentially cost charged by external providers (on a per KID basis),

13-client support team to answer question from investors.

All of the above costs may be significantly increase for manufacturers and distributors operating in several European markets where they have to take into account various additional local requirements originating from NCAs.

(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.

See below our reply to the EC RIS consultation.

	Cost in € per individual product
A single PRIIPs KID for a SP	A significant one-off investment was made by manufacturers in quantitative systems, IT, legal and translations, of several millions although it is difficult to quantify exactly. Once a KID production tool is setup, a rough estimate from various industry participants is that the single KID cost ranges from **30 EUR up to 10 000 EUR** depending on their languages, level of complexity, IT systems. However, this is difficult to quantify.

	Cost in € per individual product
Maintaining / updating single PRIIPs KID for a SP	For SPs, same as above.

(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?

ACEPI manufacturers are not able to quantify this proportion.

It is not easy to ascertain it out of the general manufacturing costs and indeed the specific costs of producing the KIDs are not automatically passed on to the investors.

We cannot exclude that in the future manufacturers will be led to indirectly pass on to investors some of the costs of producing the KID, should such costs increase over time in light of too frequent regulatory changes.

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?

Misalignments and inconsistencies in the PRIIPs regulatory framework have actually occurred across the EU, and such market fragmentation frustrates the CMU objectives.

ACEPI deems it necessary to amend the rules regarding discretions left to local regulators so to achieve a more homogeneous implementation of the PRIIPs regulatory framework within EU Member States.

Various national practices in relation to PRIIPS heavily distort the EU level playing field.

A specific example regards the duty of ex-ante notification to NCAs of KIDs.

Under Article 5 paragraph 2 of Regulation 1286/2014 any Member State may require the ex-ante notification of the KID by PRIIPs manufacturers or the persons selling PRIIPs to the competent authority for PRIIPs marketed in that Member State. Some EU Member States have decided to exercise this option. The relevant national rules differ as to many respects and, more precisely, on (i) the scope of the notification obligations and relevant exemptions, (ii) the timing for filing, (iii) the entities subject to such obligation, (iv) the technical modalities for filing, and (v) language requirements.

As regards Italy, this requirement has been introduced for the first time in 2016 and then repealed in 2019 alongside the delegation to CONSOB of the power to identify the modalities for the authority to access KIDs before PRIIPs are distributed in Italy, taking into account the need to reduce the burdens on supervised intermediaries. However, CONSOB introduced an additional and burdensome requirement asking intermediaries to make available to the authority, by means of automated procedures, not only information included in KID, but also additional information used in the process of KID production and other information regarding PRIIPs to which KID refers.

As a result, significant additional costs for manufacturers and unnecessary operational obstacles for the Italian market were introduced, not in line with the CMU targets (being this national requirement an obstacle to the cross-border commercialisation of products) and implying a significant competitive disadvantage for PRIIPs manufacturers distributing their products in Italy.

3.4 Use of digital media

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?

As a manufacturers' industry association, ACEPI has not observed any challenges for retail investors to receive the KIDs in their preferred media.

For SPs, in particular, many manufacturers provide KID web links via their websites on a dedicated page (usually searchable by ISINs) and on centralised KID repositories platform (e.g., RegXchange).

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

Not applicable.

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

As a manufacturers' industry association, ACEPI observes a preference for the web link available on the manufacturer's web site dedicated page, which has the benefit of showing an up-to-date KID for products made available on markets, while sending it by e-mail or by paper hard copy does not have this benefit.

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

No. ACEPI's view is that Level 1 text is sufficiently clear in this respect.

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?

No.
As mentioned above, a KID must not be confused with a marketing material where certain product features may get more evidence, to draw investors' attention.
A layering of the KID information via pop-ups or via multiple link accompanying layers conflicts with the objective that the document should be read as a whole.
All paragraphs are actually dependant on each other and not just parts of the document.

The choice of a paper or electronic format should be left to the discretion of the producer, depending also on what is best for a certain distribution channel.

3.5 Scope of the PRIIPs Regulation

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.

No. ACEPI does not support including these products under PRIIPs for the following reason: as to Article (2) (2) (d) securities as referred to in points (b) to (g) because none of these are packaged securities, unless the amount repayable depends on the reference value of an underlying.

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?

ACEPI does not deem any change necessary to change the scope of PRIIPS Regulation, but rather a more precise definition of the exclusions as mentioned in answer to Q22 would be welcome.

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

ACEPI is of the opinion that based on the current rules, the following products should be out of scope:

- floating rate notes or deposit in general
- subordinated bonds which have fixed coupons not dependant on a reference underlying rate, FX, or equity
- all bonds with a make-whole clause
- all FX forwards because the amount repayable is fixed in advance and not dependant on underlying rates
- all OTC derivatives, based on the fact that usually they are not investment products, and in particular an exclusion should be provided for OTC entered into with corporates entities classified as Retail under MIFID, who are legal person and not natural persons, where the corporate treasurer or CFO department of the corporate has sufficient knowledge and experience.

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?

ACEPI supports to broaden the exclusion of some products which are not packaged as per the list in answer to Q22.

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

ACEPI agrees with the statement. However, we believe that bonds with a "make-whole clause" as defined by Directive 2021/338/EC should be clearly considered as a specific type of bonds out of the PRIIPs scope.

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 objective, or where there is not active enrolment ?

Not Applicable.

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?

ACEPI would welcome this aspect to be clarified by regulatory guidance as follows:

(i) SPs which are not actively marketed by a distributor after their subscription period should be deemed as "not made available".

(ii) for any product, if the manufacturer has showed a visible way to exclude retail investors (such as *ad hoc* statement in the legal documentation, i.e. Prospectus/Final Terms) these should be deemed "not made available", even if a retail investor could always access the information of the legal documentation of the product on passive platforms (such as referencing website for SPs).

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?

No.
ACEPI does not recommend the development of a taxonomy of the "type of PRIIPs" for these reasons:

- As far as SPs are concerned, the evolution of specific "taxonomies" or any product type standardisation efforts **should be left to market participants,** given that product types (and their use) constantly evolve;
- it requires constant and frequent update (i.e., when new wrappers or products are created);
- it may lead to disagreement between EU countries;
- it could lead to misclassification of products given the very wide ranging scope of PRIIPs and the various needs of counterparties;
- it may lead to mismatches with CFI codes under MIFID II (for instance, we have seen different clearing systems having different CFI code for the same financial instrument).

It should remain a manufacturer's responsibility to adequately describe the legal wrapper and features of the product in the "what is this product section".

3.6 Differentiation between different types of PRIIPs

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?

No. ACEPI believes that current standardisation degree is actually beneficial to a proper understanding and comparison of products.

Comparability is an advantage of a PRIIP KID, and to keep comparability to a sufficiently high level, ACEPI recommends that **the number and order of the KID sections, the format of the risk indicator, the scenario table and cost table must remain unchanged** across all products, to preserve a look and feel comparability. This would also allow a disruption to the existing regime, which is now overall well understood by distributors and investors as far as SPs are concerned.

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?

As explained in answer to Q28, ACEPI supports standardisation, especially when it refers to the quantitative parts of the KID, i.e. risk indicator, scenario table format, and cost tables.

However, in light of the different wrappers and different regulations applying to them, it could make sense to allow **some flexibility of the wordings used within the various sections of the KID but not change the number of section, neither their format nor their order at Level 1 text.** Some flexible wordings within the section depending on the type of bucket (i.e., wrapper) could help, which could be done at Level 2 rather than Level 1 text, **without a full revamp of the amended RTS dated 7 September 2021**.

The buckets **should not be overly granular**, but be limited to some broad categories and consider the articulation with the other regulations to which each wrapper is already subject to, for example MIFID II for SPs.
To some extent, the amended RTS dated 7 September 2021 already provide for different wordings to be used for the scenario costs tables, depending if the product is a fund, securities or OTCs. This overall is sufficient, without going for Level 1 changes, nor a taxonomy.

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

See ACEPI's answer to Q28.

3.7 Complexity and readability of the KID

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

No. ACEPI is of the opinion that Article 8 is sufficiently clear. Rather than rushing Level 1 changes, ACEPI recommends to let a sufficiently long application period once the RTS V2 dated 7 September 2021 becomes applicable and take more careful necessary steps to assess whether the changes brought in the KID (mainly regarding new cost tables without the reduction in yield) are delivering a sufficiently good level of understandability.

ACEPI does not believe that a change in Level 1 text regarding the templating and layout of sections will bring any added value to investors.

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

ACEPI is of the opinion that the current structure, format, order of the sections and presentation of the KID is satisfactory and has met its objective. We strongly recommends to refrain from changes the layout of the KID by modifying the Level 1 text.

Visual icons which can look too friendly are not appropriate for a regulatory disclosure document.
ACEPI believes that any visual icon of a marketing nature remain in the marketing documents which serve a fundamentally different purpose than the KID.

3.8 Performance scenarios and past performance

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

Yes, ACEPI agrees with the ESAs' assessment in the Final Report (JC 2020 66) regarding the treatment of past performance.

Regulators have rightly emphasized to investors that past performance should not be used as a guide to what they can expect in future, but the risks is still there of biased decisions of retail investors assuming past performance as the key indicator for future value evolution.

As regards SPs, which do not have a NAV, past performance does not exist and should not be shown and the simulation of past performance would defeat the purpose of the KIID Regulation,

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?

No.
ACEPI's view is that Article 8 (3) (d) (iii) should be left unchanged at Level 1, and rather address details of the assumptions to be made for performance scenario in a later Level 2 review, depending on the product scope.

This also in light of main findings of the EU Commission consumer testing that showed that "t*he percentage of consumers who selected the optimal investment product from a pair of products of the same type was similar when the information was presented with the current version of the KID and with the probabilistic approach version of the KID."*

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

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[17]? What issues or challenges might result from this approach?

Not Applicable.

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?

Not Applicable.

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?

Not Applicable.

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?

Not Applicable.

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

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?

For SPs, ACEPI recommends that cost Tables should be strictly aligned, even identical to the information provided under the MiFID II cost disclosure (i.e., EMTs).

The RTS adopted on 7 September 2021 are going in the right direction, i.e., we have almost reached the alignment with MIFID II, except for the Cost Table 2, where exit costs for SPs with RHP of 1 year or less need to be showed at RHP, which will be zero: this is misleading and should still be the ½ bid-ask prior to RHP, to be consistent with SPs which have and RHP of more than 1 year, for which the new RTS requires to show the exit costs prior to RHP (i.e. usually ½ bid-ask).

3.11 Other issues

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

No.