



JOINT COMMITTEE OF THE EUROPEAN
SUPERVISORY AUTHORITIES

JC 2017 43

28 July 2017

Joint Technical Advice

on the procedures used to establish whether a PRIIP targets specific environmental or social objectives pursuant to Article 8 (4) of Regulation (EU) No 1286/2014 on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs)

Contents

Acronyms	3
1. Executive Summary	4
2. Background and Process	5
3. Technical Advice	7
3.1. Mandate	7
3.2. Background and analysis	8
3.3. Technical Advice Area 1: Specific environmental or social objectives	11
3.4. Technical Advice Area 2: Disclosure of specific investment policy	13
3.5. Technical Advice Area 3: Governance procedures and controls	15
3.6. Technical Advice Area 4: Review of progress	17
Annex	19
I. Impact Assessment	19
II. Summary of the Feedback on the Consultation Paper	28

Acronyms

AIFMD	Alternative Investment Fund Managers Directive
AIFs	Alternative Investment Funds
CP	Consultation Paper
EBA	European Banking Authority
EC	European Commission
EIOPA	European Insurance and Occupational Pensions Authority
ESAs	European Supervisory Authorities
ESG	Environmental, Social and Governance
ESMA	European Securities and Markets Authority
EU	European Union
IDD	Insurance Distribution Directive
IMD	Insurance Mediation Directive
KID	Key Information Document
MiFID II	Markets in Financial Instruments Directive II
POG	Product Oversight and Governance
PRIIP	Packaged Retail and Insurance-based Investment Product
UCITS	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) UTC

1. Executive Summary

The European Supervisory Authorities (ESAs: EBA, EIOPA and ESMA) received a formal request (mandate) from the Commission on 31 May 2016 to provide technical advice to assist the Commission on the possible content of the delegated acts on the procedures used to establish whether a Packaged Retail and Insurance-based Investment Product (PRIIP) targets specific environmental or social objectives, under Regulation (EU) No 1286/2014.

According to Article 8 (4) the Commission is empowered to:

“... to adopt delegated acts in accordance with Article 30 specifying the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives.”

The Technical Advice is structured as follows:

After a brief overview of the European Commission’s mandate and an analysis of the background and the previous steps on the topic, the ESAs address four areas of regulatory attention with regard to PRIIPs with environmental or social objectives:

- Specific environmental or social objectives
- Disclosure of specific investment policy
- Governance procedures and controls
- Review of progress

For each of these four topics, the ESAs specify the regulatory outcome being sought, an assessment of existing rules, and set out the ESAs’ conclusion with the specific Technical Advice on the respective area.

The Technical Advice includes summaries of the responses received, the ESAs’ assessments of the responses, and sets out the final advice of the ESAs as a basis for the delegated acts to be adopted by the Commission. The Technical Advice includes an impact assessment in view of different policy options that were considered by the ESAs in preparing the Technical Advice.

For a better understanding, the ESAs recommend that stakeholders read the Technical Advice together with the Consultation Paper published on 10 February 2017 to have a complete picture of the rationale and underlying reasons for the ESAs’ policy recommendations.

2. Background and Process

PRIPs are increasingly being offered that target specific social or environmental objectives, and not only purely financial objectives.

Given this, article 8 (3) (c) of Regulation (EU) No 1286/2014 (the PRIIPs Regulation) requires a section of the Key Information Document (KID) entitled ‘What is this product?’ to outline the nature and main features of the PRIIP. Under point (ii) this shall include:

*its objectives and the means for achieving them, in particular whether the objectives are achieved by means of direct or indirect exposure to the underlying investment assets, including a description of the underlying instruments or reference values, including a specification of the markets the PRIIP invests in, **including, where applicable, specific environmental or social objectives targeted by the product**, as well as how the return is determined;”*

Given the variety of such PRIIPs, questions arise as to the sufficient level of clarity and specificity that such objectives should have, and the appropriate measures that a retail investor can expect to be in place for PRIIPs that pursue such targets.

In view of clarifying such measures, article 8 (4) of the PRIIPs Regulation states that:

The Commission shall be empowered to adopt delegated acts in accordance with Article 30 specifying the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives.

On 31st May 2016, the European Commission mandated the Joint Committee to provide its technical advice specifying the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives.

According to the mandate, where a KID states, pursuant to Article 8 (3) (c) (ii), that a PRIIP targets environmental or social objectives, it is important that the manufacturer follows sufficient processes to be able to demonstrate to potential retail investors and other stakeholders, including supervisors and market participants, the substance of these objectives, and how these specific objectives are to be met throughout the investment process and the lifetime of the PRIIP.

The European Commission requested the ESAs to consider the processes required to ensure PRIIPs manufacturers have appropriate governance systems in place to ensure that disclosed environmental or social objectives are effectively met. The ESAs should examine the product governance requirements and validation procedures laid down in existing EU legislation, whether they are also adequate for this purpose, and what extra measures might be considered if shortfalls are identified in the current legal framework. The ESAs were also requested to consider how to ensure the investment objectives and strategies adopted by the PRIIP manufacturer are clearly set out and that strategies adopted are always appropriate for the objectives set.

The ESAs published a Consultation Paper (JC 2017 05) on the 10 February 2017, to provide stakeholders with an opportunity to comment on the draft Technical Advice and an accompanying impact assessment. The ESAs noted the existence of extensive product oversight and governance

obligations in existing EU law, and outlined how these applied in view of the setting of investment objectives and strategies, and the compliance with and monitoring of these objectives and strategies, and how these apply in view of environmental or social objectives as well as investment objectives more generally or of a more purely financial nature, such as return on investment. The draft Technical Advice set out an expectation that PRIIP manufacturers that target environmental or social objectives with a particular PRIIP substantially integrate those targets into the design of that PRIIP.

The consultation closed on 24 March 2017. There were 34 responses, which are summarised in Annex I.

Following the consultation, the Technical Advice was updated, with the main changes being:

- the drafting was augmented to indicate more clearly where the existing legal framework addresses the issues raised in the mandate of the European Commission, including in particular the extent to which UCITS, AIFMD and Product Oversight and Governance measures under MiFID II and IDD together address the different expectations;
- the structure of the Technical Advice was adjusted to better reflect the mandate;
- the drafting was adjusted to avoid the implication that a new designation or label ('environmental or social PRIIPs') was being established;
- the drafting was adjusted to avoid any implication of a lack of neutrality across the full range of environmental or social objectives.

The European Commission wrote to the ESAs on 5 April, extending the timeline in the Mandate for providing the Technical Advice to 31 July 2017.

This Technical Advice was endorsed by the Joint Committee on 6 July 2017 and approved by each of the ESA Boards of Supervisors on 27 July 2017.

3. Technical Advice

3.1. Mandate

Excerpt from European Commission Mandate

Where a KID states that a PRIIP targets environmental or social objectives, the manufacturer must be able to honour this commitment on an on-going basis. If this is not the case then the KID will have failed, as it will not be accurate, fair, clear and not misleading as required under Article 6(1) of the Regulation.

The Joint Committee is requested to give advice in relation to the details of the internal product governance procedures PRIIPs manufacturers put in place. This should include consideration of what processes, systems and controls would be appropriate to ensure such internal product governance procedures are followed and validated.

In giving its advice, the Joint Committee will consider the sectoral legislation that applies to PRIIPs manufacturers. In particular, the Joint Committee will consider the product governance requirements and validation procedures set out in such legislation and whether it is adequate to ensure the disclosed environmental or social objectives are met.

The Joint Committee's attention is drawn to MiFID 2 Articles 16(3) and 24(2), the Insurance Distribution Directive (IDD) Article 25, Solvency II Articles 41, 44 and 132(2), the Capital Requirements Regulation Article 187 and the Alternative Investment Fund Managers Directive Article 15. The Joint Committee should also consider other articles and legislation it deems relevant.

The Commission has identified three process steps for determining whether PRIIPs manufacturers have appropriate governance systems in place to ensure the disclosed environmental or social objectives are met, and invites the Joint Committee to consider these steps. In doing so, the Joint Committee should also consider what extra measures might be necessary where sectoral legislation is found to be insufficient. The three process steps are:

1. The establishment of a policy statement specifying in detail the scope of the environmental or social objectives that are being targeted as well as the constraints, for example, in terms of risk/return, time horizon, liquidity, the investor will have to accept to meet these objectives.
2. The development of an investment strategy, which carries the policy statement into practice with instructions on how the PRIIPS manufacturer must fulfil the mandate. The investment strategy should also include the methods by which investors' money is allocated across asset classes filtered in light of the aims set out in the policy statement.
3. The development and operation of processes, systems and controls to ensure that the investment strategy is properly implemented and adhered to over time. This could include regular

reviews to ensure assets remain in line with the investment strategy, periodic reviews and reporting lines to responsible senior management.

The PRIIPs Regulation does not contemplate any form of labelling for products that target specific objectives, industries, sectors or outcomes, nor does it contemplate product regulation or any form of proscription of undertakings operating in particular industrial or geographical areas. The Joint Committee's advice should not explore areas that are not explicitly mandated by the level 1 text.

3.2. Background and analysis

In developing their technical advice, the ESAs took note of the following key points, as already examined in more depth in the Consultation Paper and reflecting the responses to the Consultation Paper (see Annex II):

- environmental or social objectives can be very varied, matched by very different investment strategies – running from mainly exclusionary approaches, to highly sophisticated ‘impact investment’ strategies;
- industry-led standards and typologies for specific environmental or social objectives and strategies continue to evolve, and can be expected to develop further over time, such that a determination of an EU-wide boundary between specific environmental or social objectives and other objectives remains difficult and possibly ill-advised;
- developments include the evolution of so-called ‘ESG’ (environmental, social and corporate governance) criteria, in view of integrating so-called non-financial aspects more squarely into all investment management activities, regardless of whether these activities are targeting specific ‘environmental’ or ‘social’ objectives or not;
- new obligations solely aimed at those PRIIPs targeting specific environmental or social objectives could have an undesirable cooling impact on the market for these PRIIPs, with an unlevel playing field compared to those PRIIPs not targeting such objectives, restricting up-take by PRIIP manufacturers and increasing costs for retail investors;
- specific environmental or social objectives should be treated on equal footing with other investment objectives; retail investors should have full confidence that where PRIIPs are sold as targeting environmental or social objectives, this is backed up by appropriate and sufficient substance, as with other investment objectives, in view of the activities of the PRIIP manufacturer, but also in view of supervisory oversight and civil liability.

In view of these considerations, the ESAs have concluded that it would not in general be proportionate to establish specific and detailed standalone obligations at this time for PRIIPs that target specific environmental or social objectives. Such an approach would introduce legal uncertainty without heightening investor protection, given measures of a very similar kind applying already to such PRIIPs.

This is particularly the case in view of the recent extensive enhancing of EU sectoral law applying to PRIIP manufacturers (for instance, enhancements to UCITS, the introduction of the AIFMD, and the approaching application of MiFID II, IDD and the PRIIPs Regulation itself). These frameworks are designed to ensure more consistently regulated PRIIPs and PRIIP manufacturers, and address a wide range of organisational processes and systems and controls, including their supervision and validation, whether internal or external in nature, and for some PRIIPs, authorisation procedures. In total these measures are designed to ensure PRIIPs ‘do what they say they are doing’, in a sound fashion, with robust consequences for PRIIP manufacturers where this is not the case.

The ESAs have therefore broadly concluded that existing sectoral measures in fact offer already, or are in the process of putting in place, a sufficiently stringent and flexible basis for the sound regulation of PRIIPs targeting environmental or social objectives, including such PRIIPs’ activities.

To avoid doubt, it should be reminded that environmental or social objectives are subject to the same obligations that apply to investment objectives; therefore, they are equally subject to the same upfront and ongoing oversight and compliance obligations, as investment objectives are.

Elaboration of approach

The Technical Advice has been prepared by, firstly, identifying the procedures that should be used to establish whether a PRIIP targets specific environmental or social objectives, and, secondly, by considering the extent to which existing EU law ensures that such procedures are in place.

As PRIIPs can take a wide variety of forms, specific measures that might be relevant for a particular type of PRIIP (e.g. a UCITS or AIFM), may not be relevant for all PRIIPs. The same goes for the range of potential environmental or social objectives. For this reason, the procedures identified in the Technical Advice are formulated in a broad manner, and focus on general principles.

In addition, since the mandate from the European Commission clarifies that the aim is not to define the substance of environmental or social objectives, the Technical Advice is neutral with regard to the different possibilities of such objectives, and does not attempt to define what is or is not to be considered such an objective.

The Technical Advice addresses the three areas highlighted by the European Commission mandate – establishment of clear environmental or social objectives by the PRIIP manufacturer, setting clear investment strategy for achieving these objectives, and ongoing monitoring -- but has been broken down along different lines so as to also address the integration of environmental or social objectives into the general oversight and governance measures related to the development of the PRIIP, and transparency steps related to the objectives and investment strategy.

The basic substance of the areas addressed in the Technical Advice is as follows:

- where a PRIIP manufacturer targets environmental or social objectives, these objectives and how they are to be achieved should be specific, and the strategy for achieving the objectives should be appropriate and proportionate to the objectives (**Area 1**);

- the PRIIP manufacturer should clearly disclose the objectives and how they are to be achieved to retail investors (**Area 2**).
- governance and monitoring measures should be put in place, be proportionate to the objectives and strategy, and be well documented (**Area 3**);
- regular reviews should be undertaken on progress (**Area 4**).

As noted, the ESA's have concluded that since environmental or social objectives are treated on equal footing with other investment objectives, the existing stringent EU obligations applying to investment objectives and strategies for PRIIPs and PRIIP manufacturers also apply. A detailed analysis shows that these in large part address each of the expectations outlined above. Though there are some divergences in those obligations for different PRIIPs, these divergences are not materially important in view of ensuring the sound regulation of PRIIPs that target environmental or social objectives.

Details of this assessment are set out below following each Technical Advice.

Interaction with non-binding standards

The ESAs note emergent industry or other non-binding standards for categorising different types of environmental or social objectives and investment strategies for achieving them, and associated procedures PRIIP managers should follow and steps they should take to increase transparency.

The ESAs do not consider it prudent at this time, in view of the emergent nature of these standards and their variety, to seek to establish elements of such standards at the regulatory level, also in view of the range of PRIIPs and diversity between different markets. However, PRIIP manufacturers may nonetheless benefit from considering such standards. However, it should be recalled that the regulatory obligations place on PRIIP manufacturers the responsibility for ensuring the clarity and specificity of their objectives and strategies, and the proportionality of their governance and monitoring measures in view of these objectives and strategies.

PRIIP manufacturers should be mindful that they always provide information to retail investors that is accurate, fair, clear and not misleading. In view of this, there should be no uncertainty as to whether a PRIIP is adhering to a particular standard or not, and all efforts should be taken to avoid confusion between different standards.

Liability and compliance

The Technical Advice does not address liability and compliance issues directly, as the obligations related to these are established in primary legislation, rather than delegated acts.

This is not to downplay the importance of supervisory action (in view of sanctions) and civil liability (in case of disputes at court).

In the view of the ESAs, where a PRIIP manufacturer fails to properly specify environmental or social objectives, or to identify an appropriate strategy for achieving them, or to ensure

compliance with the strategy over the life of the PRIIP, existing EU law establishes clear sanctioning powers and liability for that PRIIP manufacturer.

In particular, the PRIIPs Regulation arranges for the liability of the PRIIP manufacturer concerning the accuracy of the information it provides in the KID for a PRIIP, and for the sanctioning powers of the national competent authorities tasked with supervising the KID.

Specifically, PRIIPs that claim to target specific environmental or social objectives and which set out a specific strategy for this, yet do not follow these objectives or strategy, or which do not set out sufficiently specific objectives or strategies, will be liable for non-compliance with the obligation under Article 6 (1) of the PRIIPs Regulation, requiring each KID to be ‘accurate, fair, clear and not misleading’; moreover, in this latter instance, the PRIIPs manufacturer may incur civil liability for providing misleading information under Article 11 thereof. In terms of administrative penalties, Article 22 requires Member States to establish administrative sanctions and measures applicable to infringements of the PRIIPs Regulation, whereas Article 24 setting out a minimum list of administrative sanctions, clarifies that, among other things, those sanctions apply to instances, which constitute an infringement of Article 6 – i.e. where the information on the environmental or social objectives of a PRIIP is not accurate, fair or clear, or is misleading.

3.3. Technical Advice Area 1: Specific environmental or social objectives

Outcomes being sought

Manufacturers of PRIIPs that target specific environmental or social objectives, should establish, as part of the manufacturing process, an investment policy, determining all objectives of the PRIIP, including in detail the scope and nature of the environmental or social objectives that are being targeted, and the strategy to achieve these objectives, as well as any constraints on or interdependencies between these objectives.

The environmental or social objectives should be sufficiently specific, such that they can be clearly defined and are distinctive from the other objectives of the PRIIP.

The strategy should be clearly established and take account of the environmental or social objectives being targeted and other objectives identified for the PRIIP.

The investment strategy should be proportionate to and appropriate for complying with the identified objectives.

Assessment of existing rules

For UCITS and for AIFs, the obligation to establish a clear investment policy with specific objectives and strategies for achieving them can be viewed as a consequence of the determination of a UCITS or AIF that must be captured within its founding documents. That is to say, for a UCITS, under Article 68 of the UCITS Directive, or an AIF, under Article 23 of AIFMD, investment objectives have to be set out in the Prospectus (and for UCITS, also in the KIID under

Article 78). These establish the objectives of the fund – including environmental and social objectives – and the means for achieving them (the investment strategy). In effect this obligates all UCITS and AIFs to establish clear investment objectives and strategies, and with a sufficient specificity as to provide prospective investors with a fair, clear and not misleading view on what the UCITS or AIF will or will not do. Note these outcomes are linked to those under Area 2, on disclosures, and in the case of UCITS an authorisation regime applies.

All other PRIIPs and their manufacturers are subject to product oversight and governance obligations under either MiFID II or IDD, depending on the form of the PRIIP. The establishment of an investment policy forms part of these product oversight and governance procedures, and is covered specifically by the establishment by the PRIIP manufacturer of the target market for the PRIIP.

In establishing this target market, the PRIIP manufacturer should identify the investment objectives and needs that the PRIIP would be designed to meet, which should include the identification of specific environmental or social objectives where these are being targeted, and how the PRIIP will meet these objectives (the investment strategy). This must be undertaken with a sufficient specificity as to provide a fair, clear and not misleading view on what the PRIIP will or will not do, in view of the disclosures foreseen under Technical Advice 2.

These obligations are found in IDD Article 25, and MiFID II Articles 16 and 24 (and Article 9 and of the MiFID II Delegated Directive).

ESA Conclusion

The ESAs consider that outcomes being sought should be met for all PRIIPs under the existing frameworks.

PRIIP manufacturers should nonetheless pay specific attention to their obligations under existing frameworks to establish specific and clear objectives, and proportionate strategies for achieving them, to ensure that these are sufficiently specific.

PRIIP manufacturers may consider emergent industry and other standards for assessing different types of specific environmental or social objectives. It is necessary, in view of both the obligations related to the target market and those related to the founding documents of a UCITS or AIF, that all objectives of a PRIIP and the investment strategy for achieving these should be coherent with one another.

The specific environmental or social objectives identified could range from those that target specific investments by way of clearly defined inclusive or exclusive criteria, or include the targeting of specific social or environmental outcomes, for instance a specific carbon footprint.

Technical Advice Area 1

No new obligations have been identified.

Existing sectoral obligations applying to or shortly to apply to PRIIPs or PRIIP manufacturers ensure all PRIIP manufacturers establish as part of the manufacturing of a PRIIP specific

objectives, which shall include environmental or social objectives where the PRIIP manufacturer targets these objectives, and which are sufficiently specific.

Existing sectoral obligations applying or shortly to apply to PRIIPs or PRIIP manufacturers also ensure all PRIIP manufacturers establish investment strategies proportionate to and appropriate for the objectives being targeted.

3.4. Technical Advice Area 2: Disclosure of specific investment policy

Outcomes being sought

An environmental or social PRIIP should set out its environmental or social objectives under ‘What is this product?’ of the KID.

This should be done clearly and specifically; a reference should also be included as to whether the objectives are achieved by direct or indirect exposure to the underlying investment assets. However, it should not be required to set out all the details of the objectives and how they are to be achieved. The information in the KID should also include a reference to the target market (or intended retail investor) for the PRIIP, coherent with the environmental or social investment expectations of that target market that have been identified.

A reference should be included in the section of the KID titled ‘Other relevant information’ to where further information can be found on these specific objectives and the investment strategy to be followed to achieve them.

The further information should include details on the specific objectives and the investment strategy to be used, including details on the types of assets and investment techniques to be used, and on measures to be taken by the PRIIP manufacturer to ensure the objectives and strategy can be followed. Risks to the achievement of the specific identified environmental or social objectives should be set out in clear fashion.

The further information that is provided shall be communicated to potential retail investors in language that is understandable and clear. The information shall be available prior to any investment decision.

Assessment of existing rules

The obligations related to the KID are set out in the PRIIPs Regulation. This establishes the obligation to include information on the environmental or social objectives targeted, on whether the PRIIP makes direct or indirect investments in assets, and information on the type of investor to whom the PRIIP is intended to be marketed.

However, the specific information to be contained in the KID as compared to the information to be contained in other more detailed disclosures is not prescribed in the PRIIPs Regulation.

In view of the disclosure of further details, sectoral obligations do apply that broadly can be viewed as obligating such transparency.

As set out under Technical Advice Area 1, UCITS and AIFs are required to make disclosures (prospectus and KIID for UCITS) that set out the investment objectives and the investment strategy to achieve these in detail, including an explanation of how the strategy shall achieve the objectives. UCITS are also subject to authorisation.

For insurance-based PRIIPs, Solvency II requires disclosures on the nature of each benefit or option and on the means of calculation of bonuses, (Article 185 (3)), and, where relevant (for unit-linked business) on the nature of risks to be borne by the policyholder (Article 185 (4)).

Where a prospectus is prepared for the issuance of a particular PRIIP under the Prospectus Directive, this is required to include sufficient information to allow an informed decision in view of an investment in the PRIIP, and also should be accompanied by a summary prospectus. The prospectus and its summary are subject to authorisation. For a PRIIP that is targeting environmental or social objectives, it would be expected that these targets and objectives are outlined in detail in the prospectus and summary.

Rules also apply to distributors or intermediaries when selling PRIIPs with environmental or social objectives. The IDD – which also applies to direct sellers – sets general rules to ensure the prospective policyholder is provided with information in order to make an informed decision (see IDD Article 20(4), and 29 (1) (b) in view of risks). The obligation on the intermediary or direct seller to provide information on risk should include risks to all relevant investment objectives in view of the needs of the customer and the nature of the product proposed, including risks to environmental or social objectives.

For other PRIIPs, MiFID II obliges distributors (e.g. under Article 24, and Article 44 to 48 of the delegated regulation) to inform clients on investment objectives and strategies, risks, how instruments perform in different markets, and on the target market, including the objectives and needs the product is expected to meet, thereby also including environmental or social objectives.

ESA Conclusion

The ESAs consider that the outcomes being sought should be broadly met by compliance with existing sectoral disclosure frameworks by PRIIPs manufacturers. However, the assessment of the ESAs is that these differ sufficiently in their construction and degree of harmonisation at the EU level, that the ESAs should propose some further specification.

This would be achieved best, in view of the range of PRIIPs and their varied legal forms and relevant sectoral regulation, by setting out details of the contents for the further information to always be provided, without specifying further into which existing regulatory documents or disclosures, if any, this information should be placed. Where this information is provided already in other regulatory documents or disclosures, there is no obligation to duplicate it elsewhere, but the retail investor should be able to readily find the information.

Alignment is also necessary in terms of the treatment of information related to environmental or social objectives in the KID itself.

The ESAs note that information on objectives and how a PRIIP addresses them should form both part of the disclosures by the PRIIP manufacturer, but also part of the information provided by a distributor or intermediary as under the above requirements in IDD and MiFID.

Technical Advice Area 2

The KID shall set out the environmental or social objectives of the PRIIP in the section titled ‘What is this product?’.

The KID shall be clear and specific as to the environmental or social objectives that are being targeted by the PRIIP, and include a reference as to whether the objectives are achieved by direct or only indirect exposure to the underlying investment assets, but shall not set out all the details of the objectives and how they are to be achieved. The information shall aim to enable the retail investor to decide whether these objectives meet his own personal objectives.

The information in the KID also should include a reference to the type of investor that the PRIIP is intended for that is coherent with the environmental or social investment expectations that the PRIIP manufacturer has identified.

A reference should be included in the section of the KID titled ‘Other relevant information’ to where further information can be found on these specific objectives and the associated investment strategy to be followed.

The PRIIP manufacturer shall ensure that the further information includes details on the specific objectives and the investment strategy to be used, including details on the types of assets and investment techniques to be used, and on measures to be taken by the PRIIP manufacturer to ensure the objectives and strategy are followed.

Risks outside the control of the PRIIP manufacturer that may impact the specific identified environmental or social objectives shall be set out.

The information shall enable the potential retail investor to assess the PRIIP in view of his or her desired environmental or social objectives. The information shall be expressed in language that is understandable and clear, and should be available prior to any investment decision.

3.5. Technical Advice Area 3: Governance procedures and controls

Outcomes being sought

The PRIIP manufacturer should establish appropriate governance procedures and controls to ensure they can pursue the identified investment strategies and thereby they are reasonably able to achieve the stated environmental or social objectives. This should include access to relevant expertise in view of the strategies and objectives targeted.

The procedures and controls should identify and put into place relevant monitoring processes, as appropriate, to ensure the PRIIP manufacturer follows the strategy and seeks to achieve the objectives targeted throughout the lifetime of the PRIIP.

The PRIIP manufacturer should be prepared to demonstrate the appropriateness of the procedures and controls, including monitoring processes, and its implementation of these procedures and controls in practice.

The procedures and controls should be proportionate to the environmental or social objectives that are targeted. The monitoring to be established, including the information to be gathered in view of this monitoring, should reflect the nature of the environmental or social objectives and the investment strategy. Where relevant in view of the complexity and nature of the objectives, this may include governance and control measures that include independent internal or external checks.

The PRIIP manufacturer should appropriately document the procedures and controls it puts in place, including monitoring processes.

Assessment of existing rules

The targeting of environmental or social objectives as part of the investment objectives and strategy of a PRIIP, and consequential disclosure of this, as set out in Technical Advice 1 and 2, will have the consequence that these objectives would need to be integrated into the normal oversight, governance and monitoring activities of the PRIIP manufacturer in view of the PRIIPs they offer.

For funds, the UCITS and AIFM Directives contain extensive measures related to organisational and operating processes and controls. Articles 12 and 14 of the UCITS Directive establish obligations in regards of sound and appropriate organisational arrangements and conduct of business. These are elaborated at level two in Commission Directive 2010/43/EU, Articles 4, 5, 9, 10, 22, 23, amongst others. Corresponding obligations can be found in AIFMD, for instance Article 14 of the AIFMD. Under both UCITS and AIFs a depositary is appointed, who has responsibility amongst other things for due diligence on the investments of the UCITS or AIF against the background of the investment strategy.

For other PRIIPs, procedures related to organisational and operating processes and controls form part of the product oversight and governance procedures pursuant to IDD Article 25 and MiFID II Articles 16 and 24. These include measures to establish a product approval process, proportionate to the product in question, to assess each product in view of an identified target market and the needs of that target market, and to review risks for the target market on an ongoing basis.

Delegated acts under IDD and MiFID II set out in more detail measures to be undertaken, including assessment of target market needs, product testing, documentation, oversight on processes, and ongoing review. The relevant articles in MiFID II level two for product oversight and governance obligations are Delegated Regulation Articles 9 and 10, and Article 25 of the IDD.

For insurance-based PRIIPs, the Solvency II Directive is also relevant, including the measures under Article 41, whereby national competent authorities should ensure that the undertaking has

organisational and operational structures aimed at supporting the strategic objectives and operations of the undertaking, while also Articles 44 to 48 establish details on risk management, compliance, internal audit and actuarial functions. Where investments target social or environmental objectives, these targets can be expected to be integrated into the overall framework of strategic objectives.

ESA Conclusion

The ESAs consider that the outcomes being sought should be met for all PRIIP manufacturers by compliance with existing sectoral organisational, risk management and oversight obligations.

The ESAs underline that the governance procedures and controls, including monitoring measures, PRIIP manufacturers undertake should be proportionate to the objectives they identify, but should be of sufficient substance to reflect the nature of the objectives. For instance, where objectives include the achievement of specific environmental or social impacts, steps for measuring how far these objectives are achieved should be addressed as part of the organisational and monitoring processes that are established.

PRIIP manufacturers are invited to consider emerging industry standards in view of possible best practices for matching objectives and strategies with relevant governance procedures and controls. However, it is the responsibility of the PRIIP manufacturer to assess the appropriateness of the procedures and controls put in place, and to be able to demonstrate this appropriateness in view of this assessment on request of the national competent authority.

Technical Advice Area 3

No new obligations have been identified.

Existing sectoral obligations that apply or will shortly apply to PRIIPs or PRIIP manufacturers ensure all PRIIP manufacturers establish as part of the manufacturing of a PRIIP procedures, controls and monitoring processes for ensuring the practical application and compliance with the investment objectives and strategies identified, including where these are environmental or social objectives.

Existing sectoral obligations applying to PRIIPs or PRIIP manufacturers also ensure all PRIIP manufacturers document these procedures, controls and monitoring processes.

3.6. Technical Advice Area 4: Review of progress

Outcomes being sought

The PRIIP manufacturer should include the strategies it has identified for targeting specific environmental or social objectives within its framework for ongoing compliance and associated monitoring.

The PRIIP manufacturer should review progress towards achieving the specific environmental or social objectives targeted on a periodic basis. A review should be performed at least annually, with the actual frequency of reviews taking into account the complexity of the investment policy and strategy.

Assessment of existing rules

The rules set out in relation to Technical Advice 3 also address ongoing compliance. Both the UCITS and AIFM Directives apply ongoing responsibilities and supporting organisational arrangements to ensure compliance over time, including ongoing review and the operation of specific compliance functions.

The PRIIPs Regulation obligates ongoing reviews of the KID in view of its continued accuracy, which would include reviewing the continued relevance of the targeted environmental or social objectives.

The delegated acts under IDD (to be published) and MiFID II (Article 9) both establish a regular review process in regards to the continued adherence of a PRIIP to its identified purpose for its target market.

ESA Conclusion

The ESAs consider that the outcomes being sought should be broadly met by compliance with existing oversight frameworks for all PRIIPs and PRIIP manufacturers.

Technical Advice Area 4

No new obligations have been identified.

Existing sectoral obligations that apply or will shortly apply to PRIIP manufacturers ensure all PRIIP manufacturers establish as part of the manufacturing of a PRIIP procedures, controls and monitoring processes, including ongoing compliance. This covers environmental or social objectives as well as other objectives.

Annex

I. Impact Assessment

1.1. Procedural issues and consultation of interested parties

According to the European Commission's mandate of 31st May 2016, the ESAs shall conduct analysis of costs and benefits when giving technical advice to the EC. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

The draft Technical Advice and its impact assessment were subject to public consultation between 10th of February and 23rd of March 2017. Stakeholders' responses to the public consultation were duly analysed and served as a valuable input for reviewing the proposed Technical Advice and its impact assessment.

1.2. Problem definition

The Commission invites the Joint Committee to take account of the governance and supervisory requirements set out in sectoral legislation applicable to credit institutions, insurance undertakings, investment firms and alternative investment fund managers.

A natural starting point for rules directed at governance issues (and in following up to this on governance supervision) would be to define the scope of application. For the PRIIPs with environmental or social objectives, this scope would exactly be the corresponding class of PRIIPs which have underlying investments that dwell in a wider sense around areas of preventing pollution, fostering recovery of stressed natural resources ('environmental') or support activities that are generally regarded as socially desirable ('social').

The restrictions of the mandate ('no labelling') do not allow for any approach based on a legal definition of 'social' or 'environmental' investments. In addition, there is no such notion of 'environmental' or 'social' investments defined in EU law. Furthermore, it would most likely not be flexible enough to embrace all possible future innovations that could be regarded as effective EOS PRIIPs by retail investors. Thereby, such an approach could constrain without immediate and good reason the scope of PRIIPs with environmental or social objectives. Lastly, such a definition, if deemed necessary and justified at all cannot be established in a legally sound way in the Level 2 Regulations.

Rather the positive image of products with such welcome, non-financial objectives should be safeguarded against potential abusive marketing by PRIIPs manufacturers, that could 'greenwash' their products by brushing them 'environmental', 'social' or similarly designated.

The absence of a bespoke regulatory framework on environmental or social objectives, or specific industry standards could promote innovation because of the freedom it offers, but it also factors in the proliferation of investment management and selection methods, as well as of "investible" asset classes, hindering clarity for the end investor.

Nevertheless, the described initiatives are not Union-wide accepted or even agreed and therefore have no impact outside their respective initiator's scope. PRIIP manufacturers can subject themselves to the transparency requirements of the industry standards mentioned under Section 3.2 on a voluntary basis. However, without prejudice to the liability resulting from the information included in a prospectus (where available), the standards cannot be effectively supervised and retail investor rights may in many cases not be claimed in case of infringements.

The main problems to be addressed are therefore:

- Principles, criteria and processes, to be applied at manufacturer level (as no *brand* is created, that could be used when distributing to the retail investor), in order to narratively characterise certain PRIIPs as having (legitimate) environmental and/or social objectives.
- Enabling retail investors to find and invest in PRIIPs that might meet their requirement to invest responsibly.
- Ensuring that compliance with the stated environmental and/or social objectives is maintained over time via adhering to the manufacturer's IPS, which translates the abstract objectives into an operational framework of boundaries to the investment activity of the manufacturer on behalf of the retail investor.

1.3. Baseline scenario

When analysing the impact from proposed policies, the impact assessment methodology foresees that a baseline scenario is applied as the basis for comparing policy options. This helps to identify the incremental impact of each policy option considered. The aim of the baseline scenario is to explain how the current situation would evolve without additional regulatory intervention.

The baseline scenario is the situation where the PRIIPs Regulation applies, but where there is no Delegated Act by the EC to further specify the prerequisites and obligations that Article 8, para 3 (ii) imposes on the PRIIPs manufacturer (which states that 'The key information document shall contain [...] under a section titled 'What is this product?', the nature and main features of the PRIIP, [...] including, where applicable, specific environmental or social objectives targeted by the product [...].'). This provision only relates to necessary entries in the KID.

No further requirements are given in the PRIIPs Regulation regarding the statement of the manufacturer on an investment strategy that is consistent with the environmental or social objectives, nor the necessary commitment of the manufacturer to such strategy and its proper implementation in a legally binding way.

1.4. Objectives

The overall objective of a legal framework on PRIIPs with environmental or social objectives would be to ensure that sufficient and reliable information on environmental or social objectives of a PRIIP and the ways and means of how to achieve them is given to the retail investor. Thereby, the retail investor should be enabled to take into account or even put considerable weight on

environmental or social objectives when making an investment decision. Thus, financial markets clients could in the future effectively add an ‘environmental or social dimension’ to their investments. By ensuring a well-functioning framework for ‘environmental or social governance’, they could rely on the products they choose in the sense that they actually pursue the goals stated in a monitored fashion. This helps to increase credibility of such products and thus gauge investment in assets with ethically responsible ‘side effects’.

The referred objective of the Delegated Act would be consistent with the general objective of the PRIIPs Regulation of improving transparency of PRIIPs offered to retail investors.

1.5. Policy options and analysis of impacts

The policy issues to address are as follows:

- Approaches for identification of EOS objectives of a PRIIP;
- Provision of information to client on EOS objectives;
- Processes for manufacturer’s compliance with EOS objectives.

This section explains the rationale behind the most relevant alternative solutions that the Joint Committee has examined when designing the Technical Advice. This means, that the following policy options have been regarded ex ante to the choices, that led to the draft Technical Advice under section 4.

Policy issue 1: Approaches for identification of EOS objectives of a PRIIP

With respect to the identification of EOS objectives of a PRIIP the following options have been considered:

Option 1.1: Identification solely in the KID

Under this option, the identification of the specific environmental or social objectives targeted by the product would be limited to the general description requested under the section “What is this product?” in the KID, in accordance Article 8(3)(ii) of the PRIIPs Regulation.

Option 1.2: Provision of additional information beyond the KID ‘What is this product?’ section

Under this option, PRIIPs manufacturers would be requested to elaborate on the specific environmental or social objectives identified in the KID. In particular, manufacturers would need to provide detailed information on the following items :

- description of the investment process, as to how it was tailored for meeting the environmental or social objectives
- scope of and constraints to the environmental or social objectives,

- link of the targeted objectives with the investment strategy and allocation of assets
- monitoring procedures, controls on the implementation, and validation of the strategy and adherence to the objectives.

Policy Option 1.1: Identification in the KID

No.	Pros	Cons
1	No additional costs for manufacturers	High risk of mis-sellings of non-eligible products to investor base that seeks responsible investments.
2	-	Degree of achievement of stated objectives could à posteriori be subject to dispute between PRIIP manufacturer and retail investor.

Policy Option 1.2: Provision of additional information beyond the KID ‘What is this product?’ section

No.	Pros	Cons
1	Nature of environmental or social objectives requires elaboration on the relation between investment and intended outcome	More costly to manufacturers than option 1.1, as implementation of principles triggers intellectual and practical efforts.
2	Degree of achievement of stated objectives can better be assessed than with option 1.1 (à posteriori, in case of dispute).	Additional efforts may trigger higher costs, which could make the products unattractive to manufacturers and therefore reduce the availability of PRIIPs with environmental or social objectives
3	More information enables retail investor to better assess whether the given objective meets his preferences.	Higher costs could be imposed on investors

In order to achieve the policy objective under I.4, it is necessary, but not sufficient, to state to the retail investor what environmental or social objectives a particular PRIIP pursues. It is immediately clear that not every goal that can be established for a PRIIP investment to aim for, can serve as an EOS objective. Thus, there must be some approach to delineate sensible environmental or social objectives from those that are obviously misleading or false.

A first attachment point for the retail investor in search of PRIIP investments with environmental or social objectives is – for future reference – surely the KID itself. As already mentioned, Art. 8(3)(ii) of the PRIIPs Regulation requires the manufacturer to reveal the environmental or social objectives of her/his PRIIP in the ‘What is this product’ section.

If there was no further requirement on the statement of environmental or social objectives, it would be left to the manufacturer to state for an arbitrary, loose objective for his/her PRIIP, making it looking environmental and/or social and presenting it in a manner that is appropriately concise for the named KID section. The impact assessment for Policy Issue 1 leads the ESAs to choose Policy Option 1.2, due to the superior balance of arguments in favour, over those against compared to the alternative.

Policy issue 2: Provision of information to client on environmental or social objectives

With respect to the provision of information to retail investors the following options have been considered:

Option 2.1: Full flexibility in providing information

Under this option, a manufacturer of PRIIPs with environmental or social objectives would have full discretion on how to disclose the additional information.

Option 2.2: Minimum Standards

Under this option, manufacturers of PRIIPs with environmental or social objectives would be requested to comply with a minimum set of standards:

- language understandable and clear,
- information accessible prior to the investment decision and during the life time of the PRIIP
- link in the KID .

At the same time, they will retain wide discretion on the format used to inform retail investors (e.g. through the manufacturer’s web or existing prospectus).

Option 2.3: Ad-hoc documentation

Under this option manufacturers of PRIIPS with environmental or social objectives would be requested to a provide customers with a detailed list of items, using a standardised format complementary to the KID.

Policy Option 2.1: Full flexibility in providing information

No.	Pros	Cons
1	Low cost and liability for manufacturers.	May lead to ‘do nothing’ solution by manufacturers, thus increasing the risk of wrong decisions by retail investor and depreciation of market of PRIIPs with environmental or social objectives.

No.	Pros	Cons
2		Divergence in approach with varying quality of information.
3		Could lead to render virtually any PRIIP to have environmental or social objectives.

Policy Option 2.2: Minimum Standards

No.	Pros	Cons
1	Product information needs to be provided in some instances by existing requirements on Level 1 (e.g. by prospectus, where available).	Still divergence in approaches possible with the risk of ill-perception or mis-interpretation by the retail investor, though to a lower degree than under option 2.1
2	Flexibility and proportionality automatically addressed by way of existing requirements for investment policy/strategy statements.	Requirements for investment policy/strategy information may slightly differ across applicable legislation for different underlyings (e.g. MiFID II/IDD based vs. UCITS/AIFs).
3	Increased comparability across different PRIIPs with environmental or social objectives.	

Policy Option 2.3: Ad-hoc documentation

No.	Pros	Cons
1	Sufficient space for elaborating on environmental or social objectives and their implementation	Additional amount of time for retail investor to read and digest information.
2		More costly for manufacturers to implement.

After having determined the particular environmental or social objectives towards the retail investor, the manufacturer must demonstrate to the retail investor (and indirectly also to the supervisor) what processes are envisaged for the implementation of the product's investment strategy in the day-to-day investment process in order to achieve the objectives.

Alternatives range from giving the manufacturer discretion about how to provide the information to the retail investor (Option 2.1) to presenting it within the existing legal framework and the documents thereby required (option 2.2) or to far-reaching, detailed elaboration in a dedicated document for this purpose (Option 2.3). The impact assessment of Policy Issue 2 results in the ESAs choosing Policy Option 2.2 (Minimum Standards), due to the superior balance of arguments in favour, over those against compared to Options 2.1 and 2.3.

Policy issue 3: Monitoring of manufacturer's compliance with environmental or social objectives

The transposition of environmental or social objectives into operable investment criteria needs to be followed by appropriate monitoring and control measures on the side of the manufacturer in order to ensure ongoing compliance with the stated investment policy and strategy. In that respect, the following options have been considered:

Option 3.1: Relying on existing product governance and oversight measures

This option would follow the range of monitoring processes, systems and controls, that need to be established according to existing level one legislation for different types of PRIIP, including those with environmental or social objectives.

Option 3.2: Create principles for monitoring obligations in order to reflect the specific nature of environmental or social objectives

This option would follow a principle-based approach that leads to clear conclusions on what checks and balances are necessary (or not) against the background of a given set of environmental or social objectives.

Option 3.3: Create specific monitoring requirements for all EOS PRIIPs and objectives

Under this option, particular standardised monitoring and systems and controls would be established as mandatory for any PRIIP with environmental or social objectives.

Policy Option 3.1: Relying on existing product governance and oversight measures in existing Level 1 legislation

No.	Pros	Cons
1	Easy to implement for manufacturers, as existing product oversight and governance rules just need to be followed with respect to the specific environmental or social objectives.	Diverging requirements in Level 1 EU legislation (e.g. MiFID II, AIFMD, UCITS or IDD).
2	No or low additional costs as no additional documents are needed and integration of the information on environmental or social objectives in existing documentation should be straightforward.	
3	Legal clarity.	

Policy Option 3.2: Create principles for monitoring obligations in order to reflect diverging nature of environmental or objectives

No.	Pros	Cons
1	Adaptability for specific environmental or social objectives.	Legal uncertainty.
2	Proportionality can be easily achieved.	Additional costs.
3	Can be enhanced by manufacturer for additional product safety.	

Policy Option 3.3: Create strict monitoring rules for PRIIPs with environmental or social objectives

No.	Pros	Cons
1	Legal clarity.	Inflexible approach.
2	Can be checked easily by supervisors.	Not proportional, as all PRIIPs with environmental or social objectives need to comply with the same POG obligations.
3		Specific compliance risks (in terms of environmental or social objectives) might not be appropriately targeted.
4		Additional costs

The outcome of the impact assessment for Policy Issue 3 involves the ESAs choosing Policy Option 3.1 (relying on existing sectoral product governance and oversight measures), whereby existing legal requirements were found to generally cover necessary governance requirements, given that they are interpreted according to the specific nature of environmental or social objectives. Thus, the additional burden, particularly with respect to disclosure, but also for other governance areas, is limited, while the proportionality, flexibility and – most important – product safety aspects can be maintained.

II. Summary of the Feedback on the Consultation Paper

The ESAs published the Joint Consultation Paper on 10 February 2017¹. Comments from 34 respondents were received, before the consultation procedure was closed on 23 March 2017, 18h00 CET.

Response was given by national and international associations in the insurance and asset management business, dedicated responsible investment companies and organisations, banks, stock exchanges, interested individuals and other stakeholder groups².

Comments referred mainly to four different topics:

i. Scope of the Product Oversight and Governance rules (POG rules)

A number of respondents criticised the proposed draft ‘Technical Advice 2’, which states:

All manufacturers of EOS PRIIPs shall comply with the MiFID II or IDD product governance rules, depending on the product being a financial instrument, structured deposit or an insurance-based investment product.

According to the comments received, it was not regarded as legally sound to impose MiFID II or IDD POG rules on PRIIPs which have UCITS or AIFMD funds as underlyings, but would rather require a change on the Level 1. It was argued that, from a UCITS/AIFM fund management point of view, the reference to MiFID II product governance could not be established, as fund management is exempt from the scope of the MiFID II Directive. Likewise, fund management companies would not be in the scope of the Insurance Distribution Directive. In addition, it was noted that the POG rules for IDD related products had not entered into force at the time of the Public Consultation.

In relation to product validation procedures, respondents pointed out that for UCITS (and AIFs equivalently) the relevant EU legislation provides a system of POG and product validation rules for UCITS and AIFs, that is equivalent to the corresponding MiFID II and IDD framework and therefore sufficient for the purposes of establishing whether a PRIIP has environmental or social objectives.

For AIFMs it was explained that there is no specific validation of the product, as the AIFMD regulates managers, not products. However, comments referred to several EU Member States, which mirror UCITS authorisation procedures for retail AIFs via national legislation.

¹ http://esas-joint-committee.europa.eu/Publications/Consultations/JC_2017_05_CP_EOS_PRIIPs_final.pdf

² Consolidated non-confidential comments are available under <https://esas-joint-committee.europa.eu>.

In respect of the development of an investment strategy and of the ongoing monitoring for UCITS-based EOS PRIIPs, reference was made to UCITS Delegated Legal Acts ('Level 2'), where relevant provision already exist for this product category.

As an additional level of monitoring of the adherence to the EOS PRIIPs investment objectives, the UCITS and AIFM depositary was named, as such is required by both the UCITS and the AIFM Directive. The depositary would have the duty to reject deals made by the UCITS or AIF manager, if it violates specific investment objectives of the fund (and thereby of the EOS PRIIP), thus rendering an additional level of protection.

It was further mentioned that UCITS funds will, according to the rules currently applicable, not be producing PRIIPs KID and will not disclose EOS for the time being. Instead, according to current requirements the investment policy of the UCITS fund has to be part of the fund prospectus. For AIFs, all investment policy descriptions should meet the qualitative descriptions based on the general rules on prospectuses and AIF documentation. Respondents in some cases doubted that the rules incorporating EOS objectives in a PRIIP KID should be more stringent than any other investment approach.

In addition, it was argued that explaining an ESG approach to the investments of a fund in the key investor information document (the 'UCITS KIID') would be nothing new, as it would be already considered appropriate to explain such an approach under the heading 'Objectives and Investment Policy', given that such an approach is part of the fundamental policy of the legal documents of the fund. The same should – in the opinion of some respondents – apply to the PRIIPs KID: those investment products with an ESG or EOS objective in their legal documentation should highlight this in their PRIIPs KID.

ii. Scope of eligible PRIIPs products and the related investment strategy

Comments made on this topic mainly referred to draft 'Technical Advice 3' of the Consultation Paper:

"All PRIIP manufacturers that claim to pursue environmental or social (EOS) objectives shall establish, implement and maintain, in a way that is appropriate and proportionate, product governance procedures to ensure that the stated non-financial investment objectives are adhered to during the lifetime of the EOS PRIIP.

All PRIIP manufactures shall ensure that the money invested via the PRIIP are effectively and predominantly employed for the achievement of the stated EOS objectives. None of the funds underlying the EOS PRIIP must undermine the stated EOS objectives."

It was assessed that, although the ESAs recognise the different strategies applied within the product segment of 'Responsible Investment' and specifically explain

that this diversity of possible EOS PRIIPs is reflected, the draft Technical Advice would run contrary to this aim.

The requirement to use the money invested the achievement of the stated EOS objectives was particularly mentioned to indicate that the investment objective has to be the achievement of an impact. Respondents noted that all responsible investment strategies may achieve an impact over time, but the only strategy really targeting such impact would be Impact Investing.

Reference was made to the Eurosif research³, which states that Impact Investing has still the smallest share among all responsible investment strategies (RI strategies), while being the fastest growing. As RI strategies other than Impact Investing would usually not allow for any measurable achievement of EOS objective, limiting the eligible strategies to this particular one – the reference in the TA was interpreted this way – was regarded as too restrictive. In addition, fund manufacturers should be allowed to adjust the investment strategy during the lifetime of a fund.

Furthermore, the draft advice was regarded as limiting the ability of PRIIPs manufacturers of using index tracking by the requirement that the non-financial investment objective are adhered to during the lifetime of the EOS PRIIP. EOS PRIIPs tracking an index would define a basket of companies which at the start of the product comply with EOS objectives. The KIID of these structured products would make clear to the investors that selection of the companies with respect to their compliance with EOS objectives has been made only at the inception of the product. It was argued that it is the nature of index tracking products would be that active management is not possible after launch. Thus, it could not completely ruled out that during the lifetime of such products one company in the underlying basket could breach the EOS objectives.

- iii. Level-playing field with PRIIPs other than those having environmental or social objectives ('non-EOS PRIIPs')

Respondents noted that the consultation states at the outset that new documents are not required for outlining EOS objectives in the PRIIPs KID, but viewed that as contradicted in Technical Advice 4, where reference is made to the 'Investment Policy Statement' which requires compliance with several qualitative requirements. The investment policy s was rightly regarded as a central part of the UCITS prospectus and the AIF fund documentation, and the qualitative requirements of these funds were regarded as 'sufficient'. It was therefore concluded that the statement on responsible investing in the EOS PRIIPs KID would also meet the qualitative requirements that must be met by any PRIIP KID. Thus, it was argued that there should not be any further requirement for an EOS PRIIP as it should be treated the same as a non-EOS PRIIP.

³ <http://www.eurosif.org/sri-study-2016/>.

Concerns were also raised regarding the additional disclosure requirement, although the effect of retail investors being enabled to access the IPS prior to their investment decision was welcomed. The additional requirements were viewed nevertheless critical, as they would come as an add-on to the disclosure requirements already foreseen in sectoral legislation. This was feared to become a responsibility for the distributor, depending on the actual wording of such requirement, which in turn “could become a barrier to distributing EOS PRIIPs”. Similar views were expressed with regard to the additional information to be provided to investors in respect of any deviation from the EOS objectives and investment strategy. Respondents requested EOS PRIIPs to be treated the same as non-EOS PRIIPs, where such “deviation alert” is currently not required.

In general, the proposed regulations which would bring about additional requirements were assessed discriminatory vis-à-vis “sustainable” (i.e. EOS) PRIIPs in relation to conventional PRIIPs, thereby adversely affecting the market for sustainable investment. The additional requirements would contradict the idea of a harmonization of UCITS and would not lead to comparability and thus to consumer-friendly design.

From an asset management and fund perspective, the additional obligation to monitor ongoing compliance with the investment strategy was rejected, as this would already apply to investment funds due to current legislation. For products regulated by the IDD or the MiFID, corresponding monitoring obligations are regarded to be already part of the respective POG framework.

ESAs were suggested to state clearly that also manufacturers of PRIIPs with underlying funds, such as UCITS, or others which have to have a prospectus, should be eligible for alternative publication of the EOS PRIIP’s Investment Policy Statement via a website (instead of including it in the prospectus). Also, several comments recommended to introduce a clarification that documents, which are anyway produced according to existing legal requirements and which aim at related transparency issues, could be used and would not be needed to “copy-pasted” in order to comply with alleged additional obligations.

Especially for Exchange Traded Derivatives it was argued that these would most likely not be eligible to become EOS PRIIP underlying. While options and futures, on which an ETD could be build, can be launched on an underlying share or index that have EOS PRIIPs objectives (or at least elements thereof) incorporated, the decision process of an ETD itself rather follows factors like the liquidity in the underlying, market or hedging needs asf. Thus, the ETD would not include a specific EOS targeted choice and could therefore not be the basis for any EOS PRIIP, which was implicitly regarded as a competitive disadvantage for these kinds of products and could therefore not be the basis for any EOS PRIIP, which was implicitly regarded as a competitive disadvantage for these kinds of products.

- iv. Abbreviation used for PRIIPs with environmental or social objectives (‘EOS PRIIPs’)

It was argued that the market for sustainable and responsible investments (SRIs) has already a variety of acronyms, such that the promotion of the “new ‘EOS PRIIPs’ acronym” would contribute to making the market more difficult to assess for investors.

Reference was made to DG FISMA’s High-level Group on Sustainable Finance and other crucial initiatives and directives (e.g. IORPS, Non-financial Reporting Directive, Shareholder Rights Directive, Capital Market Union), which demonstrate the willingness of regulators to define the crucial elements around ESG (Environmental, Social and Governance criteria) and by which momentum was built around Sustainable and Responsible Investments (SRI). For this reason, respondents suggested to reformulate EOS (objectives) into ESG to “ensure that PRIIPs maintains a coherent narrative in this sense”.

Comments suggested that the presentation of EOS objectives of a given PRIIP (if “nevertheless needed”) should be adapted to existing standards and terminologies (e.g. for funds, the Eurosif Transparency Code or the French SRI investment standard). To this end, and to be consistent with other EU private financial legislations like IORPs II or the Shareholder Rights Directive, the KID should integrate ESG disclosure requirement and ESG risk assessment (impact). In order to increase retail investors’ ability to make investment decisions, it was suggested to clearly define environmental, social and governance factors. According to the assessment of the ESAs, such an approach would result in a ‘de facto label’, which was explicitly excluded by the European Commission’s mandate. Alternatively, it was suggested to refer to the definitions under <https://www.unpri.org/about/what-is-responsible-investment>. Apart from possibly being equally close to a label, this reference may not result in a sufficiently ‘exclusive’ set of product to prevent PRIIPs being offered which comply with the claimed environmental or social objective to the extent desired or concluded by retail investors from the marketing of such products (‘greenwashing’).