	Comments Template for Joint Consultation Paper concerning amendments to the PRIIPs KID (JC 2018 60)	**Deadline** **6 December 2018** **23:55 CET**
Name of Company:	**Bund der Versicherten** (German Association of Insured)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
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Reference	**Comment**	
General Comments	BdV welcomes and appreciates the effort of the European Commission and of the European Supervisory Authorities to put forward proposals for targeted amendments of the Delegated Regulation (DR) concerning the presentation and content of the key information document (KID) for Packaged Retail and Insurance-Based Investment Products (PRIIPs). First, BdV together with BETTER FINANCE finds that the very short consultation timeframe (less than a month) on such an important as well as technical issue puts representatives of savers and consumers at a strong disadvantage and gives us too little time to provide a detailed and complete response.	

	Second, BdV together with BETTER FINANCE wishes to stress that it has always strongly supported the aim of the PRIIPs Regulation: - It is the first – and so far the only - "horizontal" EU set of investor protection rules that encompasses both non-insurance based and insurance based retail investment products. - The PRIIPs KID aims "to enable retail investors to understand and compare the key features and risks of the PRIIP" (article 1 of the PRIIPs Level I Regulation). This major investor protection initiative must be effective and preserved for EU savers' sake. "The concept of the Kid is admirable; unfortunately, its execution is a disaster." (Professor John Kay, 2018) The purpose of the PRIIPs Regulation is indeed more precise and clearer than that stated by the ESAs in the consultation paper: it is again "to enable retail investors to understand and compare the key features and risks of PRIIPs". However, the resulting Key Information Document (KID) is: - very difficult to understand, - and almost impossible to compare even for the finance experts, not to mention the average European saver. - It is also much too often highly misleading for savers and investors, especially regarding the "future performance scenarios", one of which is in turn used to compute and disclose so-called "reduction in yield" cost . "The only function of economic forecasting is to make astrology look respectable." (Ezra Solomon, Professor of Finance, Stanford University) "Future outcomes are impossible to predict" (ESAs' November 2018 Consultation Paper on PRIIPs, page 10) "Key information documents are misleading because, when you wade through the complexity, the prospective returns are little more than a projection of historic returns over the past five years. This is a triumph of pseudoscience over common sense. Such past performance is no guide to the	

	future. In the past, regulators have rightly emphasized to investors that past performance should not be used as a guide to what they can expect in future. Yet it seems that they have not succeeded in persuading themselves of this important truth." (Professor John Kay, Financial times, January 2018) Albeit most of the ESAs proposals to amend the DR are aimed into the right direction, they are unfortunately far from actually addressing these fundamental issues BETTER FINANCE and most other stakeholders have repeatedly highlighted in relation to the information presented in the PRIIPs KID. Moreover, a significant number of other serious issues are also not addressed, nor identified by this Public Consultation: • The violation of several MIFID II rules concerning information disclosure; in particular "Future performance information based on past performance should be accompanied by a prominent warning that it is not a reliable indicator of future performance" . • The overly optimistic assumptions of future performance scenarios: last 5-year historic performances which were "bull" market years for both stocks and for bonds), their misleading linearity, and the inadequate and usually too short-term past performance basis (only five years including for pension products such as life cycle funds); • The method to evaluate transaction costs leads sometimes to "negative costs" (i.e. income) which is non-sense and can only confuse individual investors; • The quasi impossibility to compare costs from one product to the other; • The "sovereign" power of each and every PRIIP manufacturer regarding the choice of the recommended holding period, that highly impacts current cost disclosures in the KID; • The absence of any disclosure of objective benchmarks with which the product's performances can be compared. Moreover, BdV together with BETTER FINANCE is very thankful to the ESAs to propose in this CP to reintroduce the disclosure of long term (ten years minimum) past performance and relative to	

	their investment objectives (benchmarks, as currently mandated to UCITS funds. Indeed, the current KID eliminates all comparable and standardized information on long-term past performance of both the PRIIPS and of their benchmarks, preventing investors from: • Knowing whether the product has made any money or not for the investor in the past, hiding instead this crucial info to consumers (e.g. high fee money market funds which have destroyed value in recent years) • Assessing if/how the manager has achieved its investment objectives • Comparing similar products (e.g. two European equity index funds). Also, long term past performance relative to benchmarks (not short term absolute past performance) can still be a reliable indicator of future performance for specific categories of retail investment products such as index funds/ETFs and with profit insurance policies: as for both the level of fees is highly predictive of future returns. However, only placating the past performance graph of the UCITS KIID next to the existing future performance scenarios, which will remain, and in addition remain as they are (same methodology and same numbers as acknowledged by the ESAs' CP) will confuse investors further. A full review of the PRIIPs Regulation (level 2 and level 1) is highly demanded by all stakeholders. The European Commission should have done it already this year to comply with Article 33 of the Level 1 Regulation. Thanks to the European Parliament, an amendment seems likely to require the EC to do the full review by next year (2019). BETTER FINANCE strongly supports this amendment. This would give time to conduct a consumer testing to improve this ill-designed Regulation and allow for the collection of robust evidence and data. Moreover, these "quick fixes" to level 2 Regulation only should not exempt EU Authorities to make the more important and profound changes following the full review. This would result in changing the KID for the same product for the third time in a row in the course of about 2 or 3 years, adding to the confusion of retail investors and unnecessarily burden PRIIPs manufacturers. The number of revisions should be reduced to the minimum possible, for purposes of legal certainty and clarity.	

	To conclude, BdV together with BETTER FINANCE asks the European Commission and the ESAs to address possible amendments to the current PRIIPs KID as soon as possible through a full review, including Level 1 legislation, rather than trying to patch it first with“targeted” “quick fixes”in haste, without consumer testing, and on the level 2 Regulation only .	
Q1	First, we question what the ESAs mean by “where it is available”? We much prefer the current rule for UCITS funds: those are required to provide 10-year minimum past performances, or since the inception of the product if shorter. Second, BdV together with BETTER FINANCE fully agrees that information on long term past performance and relative to the manager’s investment objectives (benchmarks) as proposed by the ESAs’ CP should be included in the PRIIPs KID, but not merely placed next to the existing incorrect and highly misleading and last 5-year performances based “future performance scenarios. BdV together with BETTER FINANCE has been strongly criticising the current design of the PRIIPs KID due to, in particular, the elimination of all comparable and standardized information on long-term past performance of both the funds and of their benchmarks, preventing investors from i) finding out if the funds have ever made money or not; ii) knowing if their managers have achieved their investment goals or not; iii) comparing the value of two similar funds. Information on the past performance figures is the only objective and reliable indicator of the quality of an investment product and suitability for the potential client’s preferences. Not only it is the element that characterises the product manufacturer’s ability to meet the self-imposed objectives since inception, but it is also one of the measures (along with the Synthetic Risk and Reward Indicator – SRRI) to compare between a large range of products of the same type, which is the ultimate aim of the PRIIPs Regulation. Moreover, the past performance is undisputed by essence, there are no limitations nor caveats to the objective results an investment has already achieved, compared to the unreliable	

	performance projections (future performance scenarios) as the Consultation Paper candidly acknowledged in footnote 12 that "future outcomes are impossible to predict". That being said, BdV together with BETTER FINANCE sees a great improvement in including long term and relative past performance information in the current KID. This must not exclude the obligatory information on guaranteed pay-outs of insurance-based investment products if there are any.	
Q2	There are obviously for new products and some specific structured products. Otherwise, we do not see any exception to the mandatory and full disclosure of long term (or since exception if shorter) past performances and relative to the manager's investment objectives, as required in the current UCITS KIID Regulation. New products should follow the rules spelled out in the UCITS KIID Regulation and in MiFID II. Structured products should follow the specific rules of the UCITS KIID Regulation for structured UCITS and of MiFID II. We find no reason to exempt insurance-based investment products from this essential requirement. Actually, it would be one key benefit brought by the PRIIPs KID, as, up to now, life insurance policy holders are most often deprived from this information in the existing key disclosure requirements from Member States (for example in France and Germany). BETTER FINANCE strongly believes that any kind of performance simulation, either past or future performance, should not be used in any circumstance as it will not reflect the reality nor the features of the product and it is highly likely to give rise to false expectations to retail investors and constitute misleading information, defeating the purpose of Article 24 MiFID II and of Article 6(1) of the PRIIPs Regulation. The proposal to include simulated past performance for structured PRIIPs where actual historical data does not exist would even be inconsistent with the current approach used in the KIID Regulation for structured-UCITS (Article 36 thereof) which **prohibits publication of performance information**.	

	Moreover, BETTER FINANCE believes it should be mandatory wherever actual past performance of a PRIIP does not exist to publish the past performance of an **objective** benchmark (e.g. a capital market segment index, but not a so called "peer group" as the whole such peer group could be underperforming the underlying capital market segments) in order to provide a comprehensive graphical representation of the reality, i.e. how the market actually performed and how the peer group of the product is situated compared to the market. This is because the assessment of the product cannot be achieved, but the retail investor would be better positioned to take an informed decision on the basis of objective ***real*** indicators, i.e. valuations that already happened.	
Q3	BdV together with BETTER FINANCE agrees that the past performance information must be based on the current approach used for the UCITS KIID as: • it is long term: minimum ten years or since the product's inception if shorter, i.e. much longer than the 5-year timeframe currently used by the PRIIPS KID as a basis to future performance scenarios. • it is relative – compared – to the past performance of the investment objectives of the product's manager (the benchmark he chose). Indeed, absolute performance without any benchmark is much less relevant and often misleading. The KIID Regulation (the current approach for past performance for UCITS) specifies that, when the product has a corresponding benchmark index who's performance it tracks or when it is managed, directly or indirectly, explicitly or implicitly, in comparison to the latter, the past performance of the benchmark index must be presented alongside the past performance of the product (Article 7(1)d of the KIID Regulation). We believe that this provision of the KIID Regulation should be replicated in the targeted amendment for the performance sub-section of the PRIIPs KID. Nevertheless, BETTER FINANCE's investigations have revealed that there is still too little supervisory convergence on the implementation of this rule from 2010. One identified weakness of the past performance disclosure requirements in the UCITS funds KIID though, is the fact that they disclose the performance per annum but not the cumulated one over	

	time. Many studies, including OECD surveys show that the majority of people do not know how to compute compounded (cumulated) returns. Therefore, the current format of past performance disclosure in the KIID does not comply with the basic rule of MiFID I and II that requires the information to be intelligible to the majority of the people to whom it is communicated. BETTER FINANCE has proposed a clearer and more meaningful format proposal. With regard to insurance-based investment products it will always be possible to present past performances. If any guarantees are given, e.g. German life insurers publish each year a fixed amount of additional surplus. In case of unit-linked products, e.g. British life insurers should be obliged to disclose the average surplus paid out for each year based on the "smoothing" method. No matter if guarantees are given or not, life insurers are always able to calculate the total interest rate ("Gesamtverzinsung") they had paid out to their customers each year, and this can be shown by a linear graph.	
Q4	BdV together with BETTER FINANCE believes that, where actual past performance is not available (either because the product is new or because the product itself is of such nature that it does not have a past performance, such as structured-UCITS, but for no other reason), it should not be replaced by simulated past performance: • for newly issued products, simulated past performance does not represent the reality; • for structured products, if actual past performance does not exist for a product, it cannot exist for “substantially the same or similar products” either, rendering the simulation of past performance defeats the purpose of the KIID Regulation. We refer to our answer on to Question 2 of this section.	
Q5	No; see our replies to questions 2 and 4 above.	
Q6	Our clear and strong preference is to eliminate these erroneous, non-intelligible and misleading future performance scenarios altogether (see our general comments above). BETTER FINANCE has been advocating for some time already to, at the very least, make PRIIPs KID compliant with MIFID II rules on performance disclosure, in particular by adding to the future	

	performance scenarios a prominent warning stating that such forecasts are not reliable indicators of future performance, and are themselves based on past performance. We would recommend simplifying the language and replace the wording proposed in the consultation paper with a very simple and short warning, preferably in a substantial size and red colour of the font, such as "Future performance scenarios are NOT reliable indicators of actual future performance. Also, they are themselves based on past performances". Nevertheless, BdV together with BETTER FINANCE would recommend to the European Authorities to look in to already existing research and if need be to carry out additional research in order to evaluate the effectiveness of such warnings in the context of behavioural insights. Since some of the existing research seem to put into question the real impact of such warnings on the decision-making process of consumers and investors it would be all the more advisable to eliminate the future performance scenarios altogether. Also, behavioural finance findings show that individual savers and investors rarely read the narrative and the fine print.	
Q7	BdV together with BETTER FINANCE welcomes the openness of the ESAs to discuss several other options that might be used to modify the PRIIPs KID methodology and content presentation, despite of their preliminary finding that these are not viable: "these options could be combined with the inclusion of past performance where available and similar amendments to the narrative explanations to those discussed in the previous Section". With regard to the risk-free rate of return becoming the anchoring-variable in performance scenario computations, BETTER FINANCE notices that the ESAs have envisaged responding to criticism from PRIIPs manufacturers that the moderate and favourable scenarios are overly optimistic, aiming to "remove the risk that the future performance scenarios are, due to particularly positive or negative performance observed during the past 5 years, at a level which could be claimed to be misleading in view of the market expectation at a given time". To begin with, BdV together with BETTER FINANCE believes that the product between the first	

	central moment of the distribution and the number of observations is one of the few objective elements of the formulas to determine the values at the end of each performance scenario which, replaced with another simulated variable, would add even more uncertainty to the projected results after 1 year, at intermediate periods, and at the recommended holding period. Second, BdV together with BETTER FINANCE believes there is little value to the majority PRIIPs to base performance projections on a risk-free rate as it does not (and cannot) capture the features and risk profile of the products. With regard to reducing the number of performance scenarios and changing the presentation layout from a table to a graph, BdV together with BETTER FINANCE believes the amendments are in a good direction: as the ESAs have pointed out, most retail investors tend to believe that the moderate scenario is the most certain, although the possibility of occurrence of all performance scenarios ranges from 0-100% equally – therefore, eliminating the moderate and unfavourable scenario presentation might alleviate a part of the confusion to the retail investor that the PRIIPs KID produces now. Moreover, the idea of a graph with a darker shading between the stress scenario curve and the favourable scenario curve might actually reinforce the prominent warning that those represent simulations, and anything can happen to the investment and an infinite number of outcomes are expected. Nevertheless, this should be submitted to proper consumer testing. With regard to the extension of the historical performance to calculate the SRI and performance scenarios invariables (mean r, skew and kurtosis), BdV together with BETTER FINANCE believe it would bring value to increase the period of observation for the distribution of results analysis from 5 years to 10 years as it reduces the risk of capturing only one market. cycle The longer the observation period (N and T), the more accurate will the first central moment of dispersion of variables be, determining consequently a more accurate third central moment (skew) and fourth central moment (kurtosis).	

	In spite of all the abovementioned observations, BdV together with BETTER FINANCE is of the opinion that it is not possible to substantially or significantly improve the information on future performance scenarios and we would again strongly recommend to eliminate the future performance scenarios. We are fully aware tis would require amending the Level I Regulation, and this is one of the reasons why we ask for a full review of the PRIIPs package instead of this limited and "targeted" one on the level II Regulation.	
Q8	Reiterating and insisting on the final paragraph from the answer to Question 7, BETTER FINANCE is of the opinion that it is not possible to substantially improve the information on future performance scenarios and we would favour the elimination of the future performance scenarios.	
Q9	BdV together with BETTER FINANCE strongly disagrees with the proposed calculation methodology for the summary cost indicator (Reduction-in-Yield) formula as it de facto creates a new future performance scenario, adding to the already four presented to retail investors. This is inconsistent with the PRIIPs and MiFID II principles in several ways: • first, it de facto creates a fifth and even more misleading future performance scenario (3% future return per annum) • second, it is inconsistent, irrelevant and incorrect to use a 3% annual internal rate of return r (pt. 71 of Annex VI of the PRIIPs DR) for the calculation of the cost indicator when the moderate scenario is close to 0% or negative, and it gives completely false expectations and information to the retail investor of the effects of fees on their potential profit. For example, a typical money market fund with a n annual fee of 0.50% and a recent annual gross return of 0,50 % (used as the "moderate" scenario) would currently show a RIY cost of 100%. The ESAs' proposal would multiply the expected return six-fold and accordingly reduce the RIY cost indicator to 17%. That is highly misleading. • third, it will be an unjustified competitive advantage to PRIIPs with low future outcome distribution in the 50th percentile and, respectively, disadvantage to those PRIIPs with higher future return expectations; • lastly, and most importantly, it essentially defeats the purpose of the SCI and RiY	

	calculations as these are not meant to show the “happy outcomes”, i.e. when the moderate scenario would be positive so that the investor benefits (the i rate of return ≥ 0%) of something in the end, but it must make the investor aware that the risk he or she takes of having negative returns is exponentiated by the level of fees charges by the PRIIP manufacturer.	
Q10	Not enough time to analyse.	
Q11	Not enough time to analyse.	
Q12	Not enough time to analyse.	
Q13	Though there is not enough time for a fundamental analysis we would like to insist that – with regard to a future level 1 amendment of the PRIIPs regulation - benefits and costs of the pay-out phase should be taken into account as well. Benefits of the pay-out phase may be lump sum, annuity (guaranteed or not), regular withdrawals or a combination of these options. The itemized disclosure of costs (as well for the contribution phase as for the pay-out phase) should be made possible for these costs (entry costs, ongoing administration costs and any possible exit costs like in case of early cancellation). Additionally there should only be a restricted number of options how to present these costs (percentage of accumulated capital, percentage of total sum of contributions or percentage of actual pay-outs).	