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| 16 October 2019 |

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| Response form for the Joint Consultation Paper concerning amendments to the PRIIPs KID |
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| Date: 16 October 2019  ESMA 30-201-535 |

Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out proposed amendments to Commission Delegated Regulation (EU) 2017/653 of 8 March 2017[[1]](#footnote-2) (hereinafter “PRIIPs Delegated Regulation”).

The consultation package includes:

• The consultation paper

• Template for comments

The ESAs invite comments on any aspect of this paper. Comments are most helpful if they:

• contain a clear rationale; and

• describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of Regulation (EU) No 1286/2014[[2]](#footnote-3) (hereinafter “PRIIPs Regulation”).

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in the present response form.
* Please do not remove tags of the type <ESA\_QUESTION\_PKID\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your response, name your response form according to the following convention: ESA\_PKID\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA\_PKID\_ABCD\_RESPONSEFORM.
* The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the [ESMA website](https://www.esma.europa.eu/press-news/consultations) under the heading ‘Your input - Consultations’ by 13 January 2020.
* Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[[3]](#footnote-4). Further information on data protection can be found under the [Legal notice](http://www.eba.europa.eu/legal-notice) section of the EBA website and under the [Legal notice](https://eiopa.europa.eu/Pages/Links/Legal-notice.aspx) section of the EIOPA website and under the [Legal notice](https://www.esma.europa.eu/legal-notice) section of the ESMA website.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | European Saving and Retail banking Group |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_PKID\_1>

Even though we appreciate the current efforts by the European Supervisory Authorities (ESAs) to achieve improvements with respect to the performance scenarios and the costs, we nevertheless think that the envisaged amendments will not be able to fully solve the observed issues in the current PRIIPs-methodologies.

This is why we think that only a full and comprehensive review of the PRIIPs Regulation (including Level I and Level II) is able to achieve real improvements for investors. This view is supported by article 33 paragraph 1 of the PRIIPs Regulation, whose scope clearly goes beyond a review of the PRIIPs delegated regulation (“…the Commission shall review this Regulation. The review … shall also include a survey of the practical application of the rules laid down in this Regulation…”).

Even the ESAs state in the Consultation Paper (CP) that some of the concerns expressed by stakeholders in the past relating to performance scenarios and costs might not be entirely resolvable through a change on the level of the Delegated Regulation (“Level II”).

In addition, any changes to the existing methodology need to be thoroughly analysed and tested in order to see the impact on the results of a wide range of concrete products and payoff profiles. However, this is a very preliminary assessment as a detailed analysis has not been provided and, unfortunately, we will not be able to conduct sufficient testing ourselves in this short consultation period in order to be certain that the new approaches will lead to a better KID.

<ESA\_COMMENT\_PKID\_1>

1. : Are there provisions in the PRIIPs Regulation or Delegated Regulation that hinder the use of digital solutions for the KID?

<ESA\_QUESTION\_PKID\_1>

In view of the increasing importance of using digital media, we would also suggest a revision of the approach on how information is presented to clients. We would like to propose that clients could receive information via paper versions of documents just in case they explicitly opt for such a provision, and as a standard approach, they could receive information electronically. Further support for such an approach can be seen in the European Union´s efforts for establishing the principle of sustainability within the financial industry (in this case through avoiding unnecessary paper versions). Such a change in the approach could also be taken as an opportunity to, based on PRIIPs, reverse the way of presenting information to clients also in other legislation (e.g. MiFID, IDD or UCITS).

<ESA\_QUESTION\_PKID\_1>

1. : Do you agree that it would be helpful if KIDs were published in a form that would allow for the information to be readily extracted using an IT tool?

<ESA\_QUESTION\_PKID\_2>

No, we do not think that this would provide any benefit for market participants as we do not see any problems with the technical transmission of the KID and its respective data. Sufficient market solutions were implemented prior to 2018 in this regard. Therefore, there is no need to facilitate the reception of the KID in a machine-readable format.

<ESA\_QUESTION\_PKID\_2>

1. : Do you think that the amendments proposed in the consultation paper should be implemented for existing PRIIPs as soon as possible before the end of 2021, or only at the beginning of 2022?

<ESA\_QUESTION\_PKID\_3>

We refer to our introductory remarks in this regard. We have serious doubts that the proposed amendments really result in a more understandable KID, especially with respect to the performance scenarios but also the costs. This is due to the fact that it’s already foreseeable that there will not be sufficient time to analyse and evaluate all proposed methods in full detail and conduct testing on enough products and payoff profiles. In our view, a thought analysis that leads to a better methodology needs time and the legislator should take the time in order to really improve the current requirements.

In order to allow a thorough review and considerable improvements of the current problems, the amendments should be aligned with the expected end of the UCITS exemption at the end of 2021.

<ESA\_QUESTION\_PKID\_3>

1. : Do you think that a graduated approach should be considered, whereby some of the requirements would be applied in a first step, followed by a second step at the beginning of 2022?

<ESA\_QUESTION\_PKID\_4>

We are not supportive of any graduated application of new requirements in this regard.

<ESA\_QUESTION\_PKID\_4>

1. : Are there material issues that are not addressed in this consultation paper that you think should be part of this review of the PRIIPs Delegated Regulation? If so, please explain the issue and how it should be addressed.

<ESA\_QUESTION\_PKID\_5>

Again, we think it is necessary to generally review both Level I and Level II since there are several issues which can only be addressed with a full PRIIPs review. In this respect, it should also be kept in mind that Art. 33 of the PRIIPs Regulation is not limited to a review of the Delegated Regulation only (cf. our introductory remarks above). In particular, the following issues should be looked into more closely:

**1. Scope of the PRIIPs-Regulation**

**a) Definition of product types**

The scope of the PRIIPs Regulation remains unclear. This not only causes uncertainty among market participants, but has also ended up limiting the range of products offered to retail investors. This is particularly evident in the bond market. According to a study of the German market carried out by Ruhr-Universität Bochum[[4]](#footnote-5), almost two thirds (63.4 per cent) of the banks surveyed said that the range of products and services offered to end customers in the area of bonds was becoming increasingly limited. The study found that the product type to experience the sharpest decline in recent years was plain vanilla bonds. This is a result of the legal uncertainty as to whether certain types of bonds fall within the scope of the PRIIPs Regulation or not.

Against this backdrop and with the letter of 19 July 2018 from the ESAs to the Commission (JC 2018 21) in mind, we recommend defining various product types at Level I and clearly specifying whether these fall within or outside the scope of the PRIIPs Regulation. Even if the list of product types is unlikely to be exhaustive, it would at least establish a legally enshrined set of basic principles which would make it easier for users to assess whether or not an individual product was covered by the scope. The annex to the above letter to the Commission could serve as a model for defining product types. There should be an in-depth analysis and, above all, discussion with market participants of what further product types could be identified and of whether they should be assigned to, or excluded from, the scope of the PRIIPs Regulation.

**c) Bonds with make-whole call provisions are not a PRIIP (Article 4(1) of the PRIIPs Regulation)**

One type of bond which we believe does not belong in the scope of the PRIIPs Regulation is bonds with so-called “make-whole” call provisions.

If a bond has a make-whole call provision, the issuer has the right, subject to a notice period, to call the bond in whole or in part at the make-whole price at any time before its maturity. The make-whole price is intended to ensure that, in the event of a call, bondholders will receive the current value of their bonds, or at least their nominal value. In other words, they will not be in a worse position than if they had sold their bonds on the market at that point in time.

When it comes to determining whether securities of this kind are covered by the scope of the PRIIPs Regulation, it should be borne in mind that the definition of “PRIIP” under Article 4(1) of the regulation specifies two elements, both of which must be present in order for a product to qualify as a PRIIP. First, the amount to be repaid must be subject to fluctuations because it depends on reference values or the performance of one or more assets (in a consultation on basic issues surrounding the regulation at the end of 2010, the European Commission described this as the necessary “investment element”). Second, the assets in question must not have been directly purchased by the investor (“packaging, structuring or engineering element”).

The element of fluctuation is most certainly absent from the design of a bond with a make-whole call provision. The payment of the make-whole amount to investors affected by a call is intended to prevent them from suffering an economic disadvantage as a consequence of the call by paying them at least the nominal amount, and possibly compensation in excess of this amount. Even if there are differences in the precise detail of the calculation method used, the amount paid is intended to reflect the current value of the securities on the call date. It is true that this amount is determined, among other things, by reference to the yield on government bonds with a comparable maturity. Essentially, however, the point is to determine the value of the relevant bond itself: external factors such as the aforementioned government bonds are used merely to help make this valuation. It is therefore not a matter of tying the value to external reference values, but of calculating the intrinsic value of the financial instrument itself, making reference to external parameters only for the purpose of carrying out this calculation (as, in certain cases, even if required by law, the amount of compensation payments for shares is determined).

**2. Presentation of costs**

**a) Harmonisation of legislation such as MiFID II and the PRIIPs Regulation**

The future amendments to the PRIIPs regulation could be used to remove existing differences between the provision of information on costs of financial products according to PRIIPs and MiFID II. E.g., both legal bases use the wording ‘total cost’, but they provide different results on the same financial instrument, as the total costs according to PRIIPs just refer to product costs and the total costs according to MiFID II refer to service costs and product costs. To avoid further confusion amongst clients, we strongly suggest differentiating these wordings and to use different wordings in the context of PRIIPs and in the context of MiFID.

Furthermore, the treatment of inducements also differs. While product costs have to be presented under the PRIIPs Regulation inclusive of inducements, inducements are classed as service costs under MiFID II, so product costs are exclusive of inducements[[5]](#footnote-6).

For clients, this means that they are provided with differing product costs for the same product (if it is both a PRIIP and a financial instrument under MiFID II), even if the information in both cases is based on the same investment amount of €10,000. For example, at a large German bank, the same product recommended for an investment of €10,000 was shown to have product costs of €246.28 or 1.38% p.a. in accordance with the PRIIPs Regulation and product costs of €111.27 or 0.56% p.a. as calculated under MiFID II.

This discrepancy, which has to be explained to clients and is difficult for them to understand, is a result of contradictory calculation requirements in EU legislation. In future legislative processes it should be ensured that thematically related legislative projects are better coordinated with one another. This applies especially to the upcoming reviews of MiFID II and the PRIIPs Regulation, and also to the work on the various sustainability projects currently underway. The aim should be to use uniformly defined terms in all legislative texts and to take account of possible interaction.

A possible solution to the problem of reconciling the PRIIPs Regulation and the Delegated Regulation with MiFID II would be to dispense with the presentation of costs in the KID if the product in question was a financial instrument within the meaning of MIFID II. This would avoid giving clients contradictory information while nevertheless informing them about the costs in accordance with the requirements of MiFID II.

**3. OTC derivatives**

Numerous requirements in the PRIIPs Regulation are not tailored to the special features of OTC derivatives. Should OTC derivatives remain within the scope of the PRIIPs Regulation, we therefore suggest a review of the Level II presentation and content requirements for KIDs geared to the specificities of OTC derivatives. Ultimately, at any rate, the Delegated Regulation should set best-fit requirements for OTC derivatives.

The ESAs have in the meantime expressly stated under point 4 of the section headed “Derivatives” in the current 19 July 2018 version of their Q&A on the PRIIPS Key Information Document (KID) (JC 2017 49), that the requirements in the Delegated Regulation do not fit many OTC derivatives and that adopting the Level II requirements may lead to clients misunderstanding products. They therefore allow derogation from the Level II requirements in certain cases. The ESAs say: ‘Nonetheless, in view of the heterogeneity of PRIIP products, cases might occur where the verbatim use of the prescribed wording creates a risk that the retail investor will be misinformed about the characteristics of the product. It is recognized that this is the case for some of the specific prescribed texts when applied to swaps and similar OTC derivative products, which do not require initial payments. In this specific case, it is considered appropriate to adjust the text.

For certain cases, the ESAs prescribe appropriate wording in the Q&A that may be used instead in the KID. These include in particular the following cases that all relate to the fact that OTC derivatives are not investment products within the meaning of the PRIIPs Regulation:

* Replacing the term “investment” or “amount invested” by “nominal amount”
* Replacing “how much you get back” by “the performance of your product”
* Replacing reference to the fact that “you could lose some or all of your investment” by reference to the fact that “you could incur significant losses”.

However, this can, at best, merely be a temporary solution for manufacturers of OTC derivatives. With regard to the problems caused by the current requirements that are tailored to investment products, the legislator should clarify in the review that PRIIPs only applies to investment products and not products for hedging purposes.

If the ESAs are of the opinion that OTC derivatives should remain in the scope of the PRIIPs regulation, the Level II requirements should be modified in order to take into account the particularities of these products and integrate at least the modifications via Q&A into the Level II requirements (having in mind that other aspects should be addressed as well).

**5. Orders by letter or fax**

Article 13(3) of the PRIIPs Regulation allows ex-post provision of a KID and requires, among other things, in this context that transactions be concluded using a means of distance communication. Where this means of distance communication is the telephone or email, the requirements of Article 13(3) of the PRIIPs Regulation can be applied; where the means of distance communication is a letter or a fax, however, they cannot. We should welcome clarification to the effect that in this case compliance with points (c) and (d) of paragraph (3) is not required and that a KID merely has to be provided without delay after execution of the transaction.

<ESA\_QUESTION\_PKID\_5>

1. : Do you have comments on the modifications to the presentation of future performance scenarios being considered? Should other factors or changes be considered?

<ESA\_QUESTION\_PKID\_6>

ESBG Members believe that illustrative scenarios should be included when the payoff of the product is complicated.

<ESA\_QUESTION\_PKID\_6>

1. : If intermediate scenarios are to be included, how should they be calculated for Category 3 PRIIPs (e.g. structured products)? If intermediate scenarios are not shown in the performance section, which performance assumption should be used for the ‘What are the costs?’ section?

<ESA\_QUESTION\_PKID\_7>

We agree with the current draft to eliminate the intermediate scenarios as well as the stress scenario. They pose a very challenging technical issue, investors have difficulties in understanding them and they provide no or only very limited information. In the interest of providing the investor with only useful information, the intermediate scenarios should be removed.

As a side note, we are sceptical in general to use a performance assumption for the ‘What are the costs?’ section of the KID as this hinders the comparability of the cost disclosure pursuant to the PRIIPs Regulation and MiFID II. We still think that it is desirable to harmonize both cost presentations and therefore, both sets of rules, the PRIIPs Regulation and MiFID II, should be stronger aligned so that, for example, the ex-ante cost statement is consistent with the cost disclosure in the PRIIPs KID. The alignment should be based on the MiFID II approach as, inter alia, the distributor which is responsible for the cost statement under MiFID is not aware of the cash flow of the moderate scenario which is necessary in order to calculate the RIY under PRIIPs.

In case intermediate scenarios are kept, the natural way to calculate them is by using a Nested Montecarlo, or Montecarlo of a MonteCarlo. This is computationally intense, some approximations can be done as the use of Least Squares MonteCarlo.

We would also suggest to use either a prescribed return assumption for calculating the intermediate costs or to use the (per annum) return before costs (including all intermediate payments before the intermediate point) of the moderate scenario at RHP. This way, the impact of costs for exiting early is illustrated without increasing complexity. Otherwise, calculating the intermediate scenarios would still be needed although they are not shown, i.e. the technical issues remain, and it increases in transparency for the investor on how the intermediate costs are calculated. If the intermediate scenarios are to be kept, it is highly important to further specify their calculation to achieve comparability and to clarify e.g. if and how to discount within the interim simulations: using a risk-free rate or if a credit spread should be added, using the current (static) or simulated (stochastic) rates.

<ESA\_QUESTION\_PKID\_7>

1. : If a stress scenario is included in the presentation of future performance scenarios, should the methodology be modified? If so, how?

<ESA\_QUESTION\_PKID\_8>

In general, we are of the opinion that a stress scenario does not provide much benefit for the investor and could be removed altogether. This would further reduce the information load for the retail investor.

If the stress scenario is to be kept, assuming a growth rate is a conservative assumption, it can be changed for using minimum rate (growth rate of the product, 0). In that case, for negative cases, at least the scenario can be taken into account.

In case a growth rate is included, it is important that the rate for the stress scenario should not exceed the growth rate of the other performance scenarios. The distinction between short- and long-term stress volatility should be eliminated since this can cause inconsistent results when either presenting intermediate scenarios or when a product switches from long- to short-term stress volatility.

<ESA\_QUESTION\_PKID\_8>

1. : Do you agree with how the reference rate is specified? If not, how should it be specified?

<ESA\_QUESTION\_PKID\_9>

It seems reasonable, but we must test the methodology before agreeing with it. The methodology presents certain doubts, for example: if we have invested in an Investment Fund, should we consider what assets the Investment Fund is investing in? Although that may be reasonable from a theoretical perspective, from a practical point it can be ungovernable.

<ESA\_QUESTION\_PKID\_9>

1. : The revised methodology specifies that the risk premium is determined by future expected yields. The methodology further specifies that future expected yields should be determined by the composition of the PRIIP decomposed by asset class, country and sector or rating. Do you agree with this approach? If not, what approach would you favour?

<ESA\_QUESTION\_PKID\_10>

It could be seen reasonable for some assets such as stocks. On the other hand, it will be harder for some other assets such as Investment Funds, Hedge Funds, Alternative Assets. However, we refer to our introductory comments regarding the probabilistic approach in general.

<ESA\_QUESTION\_PKID\_10>

1. : The ESAs are aware that historical dividend rates can be averaged over different time spans or that expected dividend rates can be read from market data providers or obtained from analyst reports. How should the expected dividend rates be determined?

<ESA\_QUESTION\_PKID\_11>

If dividends are to be estimated, we strongly suggest using historical dividends in order to eliminate potential differences in expected dividends from either internal or external sources. In any case, this should be tested before.

<ESA\_QUESTION\_PKID\_11>

1. : How should share buyback rates be estimated?

<ESA\_QUESTION\_PKID\_12>

We suggest not to include buyback rates as they are not as stable over time and would increase estimation risk even further. Our suggestion of using a long-term ERP would eliminate the necessity to estimate buyback rates.

<ESA\_QUESTION\_PKID\_12>

1. : Do you agree with the approach for money-market funds? Are there other assets which may require a similar specific provisions?

<ESA\_QUESTION\_PKID\_13>

Maybe this approach fits for other types of funds, it is required to evaluate if the new methodology makes a good forecast for returns.

<ESA\_QUESTION\_PKID\_13>

1. : The methodology proposes that the future variance be estimated from the 5-year history of daily returns. Should the volatility implied by option prices be used instead? If so, what estimate should be used if option prices are not available for a particular asset (equities namely)?

<ESA\_QUESTION\_PKID\_14>

It is not clear whether implied volatility is a good forecast, nor the historical one. As Riccardo Rebonato, professor of the EDHEC Business School, stated implied volatility is “the wrong number to put in the wrong formula to get the right price”. In case that an option price is not available for one asset, there are two options:

Using the VIX or using the implied volatility of a similar asset escalated by the ratio between the two assets.

<ESA\_QUESTION\_PKID\_14>

1. : Do you think compensatory mechanisms for unforeseen methodological faults are needed? If yes, please explain why.

<ESA\_QUESTION\_PKID\_15>

We think that the proposed compensatory mechanisms could result into a bias. These measures would also deteriorate comparability between several PRIIPs even further. Including manufacturer’s expectation introduces a highly discretionary component that would lead to incomparable results. In light of the general probabilistic approach it is also not comprehensible why the scenarios should be calculated with complex formulas at first, just to subsequently adjust them where necessary. This could confuse the retail investor further as the figures might look more realistic even though they are not precise. Furthermore, to use historical performances to adjust the performance scenarios is conceptually inconsistent because it compares one historical realization of a return path with a percentile of a distribution.

<ESA\_QUESTION\_PKID\_15>

1. : Do you favour any of the options above? If so, which ones? How would you ensure that the information in the KID remains comparable for all products?

<ESA\_QUESTION\_PKID\_16>

We are in favour to make it coherent and consistent with the data observed, although, if that is the case, it must be noted in the report.

<ESA\_QUESTION\_PKID\_16>

1. : Are there any other compensatory mechanisms that could address unforeseen methodological faults? If yes, please explain the mechanism; explain how it ensures that scenario information in the KID allows investors to compare PRIIPs, and explain how the information for similar products from different manufacturers remains sufficiently consistent.

<ESA\_QUESTION\_PKID\_17>

If the stress scenario is to be kept, the growth rate of the performance scenario should never be less than the growth rate of the stress scenario.

<ESA\_QUESTION\_PKID\_17>

1. : What are your views on the use of a simplified approach such as the one detailed above, instead of the use of probabilistic methodologies with more granular asset specific requirements?

<ESA\_QUESTION\_PKID\_18>

We generally welcome more simplified approaches, however we believe that this approach is not taking into account the country-specific assets or the alpha of the investment strategy. It is the same as measuring the returns by a benchmark.

Moreover specifying maximum growth rates and using historical drifts up to the maximum growth rate is inferior to and not less complex than the current proposal presented in our response to Q 10, i.e. to use a fixed ERP for equities.

<ESA\_QUESTION\_PKID\_18>

1. : Do you consider the use of a single table of growth rates appropriate? If no, how should the methodology be amended?

<ESA\_QUESTION\_PKID\_19>

We think that it is not appropriate, and it is possible that there is a lack of prediction. It would be useful to have a more elaborated table with more cases.

<ESA\_QUESTION\_PKID\_19>

1. : More generally, do your views about the use of a probabilistic methodology vary depending on the type of product (e.g. structured products vs non-structured products, short-term vs long-term products)? For which type of products do you see more challenges to define a probabilistic methodology and to present the results to investors?

<ESA\_QUESTION\_PKID\_20>

No, the methodology should be compatible for Category 2 and Category 3 products and should not differentiate between short- and longterm.

We consider that it will be challenge to model portfolios with a diverse asset allocation and the Structured products where simulations by asset can be computationally challenging.

<ESA\_QUESTION\_PKID\_20>

1. : Do you think these alternative approaches should be further assessed? If yes, what evidence can you provide to support these approaches or aspects of them?

<ESA\_QUESTION\_PKID\_21>

CAPM can be efficient for very liquid assets. Taking into account one index probably is not enough and it can be extended to use indexes by country. One of the main drawbacks are hedge funds and other real assets where the distribution of the assets are very different from the indexes, for example, quoting the price monthly and observing jumps. In these cases, the model won’t be efficient and the R^2 ratio will be very low.

Proposals b) and c) must be studied. It can be challenging to manage all the data necessary to do these computations. In case b), it can be challenging to find a benchmark to measure the sharp ratio.

<ESA\_QUESTION\_PKID\_21>

1. : Are there any other approaches that should be considered? What evidence are you able to provide to support these other approaches?

<ESA\_QUESTION\_PKID\_22>

No, the list of alternative approaches is, in our view, comprehensive enough.

<ESA\_QUESTION\_PKID\_22>

1. : Do you think illustrative scenarios should be included in the KID as well as probabilistic scenarios for structured products?

<ESA\_QUESTION\_PKID\_23>

We believe that illustrative scenarios should be included when the payoff of the product is complicated. However, in relation to question 23, we think that due to the limitation to three pages in the PRIIPs Regulation, it is impossible to include illustrative scenarios into the KID in addition to the probabilistic scenarios. Also, additional scenarios might deteriorate the comprehensibility of the KID even further as the investor is already overloaded with information and most likely would not understand the difference between probabilistic and illustrative scenarios. Therefore, it is appropriate to stick to one methodology.

<ESA\_QUESTION\_PKID\_23>

1. : If not, do you think illustrative scenarios should replace probabilistic scenarios for structured products?

<ESA\_QUESTION\_PKID\_24>

We believe that illustrative scenarios should be included when the payoff of the product is complicated.

<ESA\_QUESTION\_PKID\_24>

1. : Do you agree with this approach to define PRIIPs which would show illustrative performance scenarios using the existing definition of Category 3 PRIIPs? If not, why not? Where relevant, please explain why this approach would not be appropriate for certain types of Category 3 PRIIPs?

<ESA\_QUESTION\_PKID\_25>

We believe that illustrative scenarios should be included when the payoff of the product is complicated.

<ESA\_QUESTION\_PKID\_25>

1. : Would you be in favour of including information on past performance in the KID?

<ESA\_QUESTION\_PKID\_26>

In case of inclusion of information on past performance in the KID, the same methodology and approach to disclosure should be applied as in the MiFID regulation. It should be avoided that a comparison of MiFID information on past performance and PRIIPs information on past performance regarding the same product could lead to inconsistent results.

In our opinion, the inclusion of past performance scenario only makes sense for Category 2 products.

<ESA\_QUESTION\_PKID\_26>

1. : Would your answer to the previous question be different if it were possible to amend Article 6(4) of the PRIIPs Regulation?

<ESA\_QUESTION\_PKID\_27>

As long as the length limitation for the KID is 3 pages, it is very difficult to add past scenarios or more narratives, additional to the current ones.

<ESA\_QUESTION\_PKID\_27>

1. : Do you think that it can be more appropriate to show past performance in the form of an average (as shown in the ESA proposal for consumer testing) for certain types of PRIIPs? If so, for exactly which types of PRIIPs?

<ESA\_QUESTION\_PKID\_28>

Yes, it seems appropriate, but in our opinion it depends on the inclusion of the past performance.

<ESA\_QUESTION\_PKID\_28>

1. : Do you have any comments on the statement that would supplement the display of past performance (e.g. with regard to the presentation of costs which are not included in the net asset value (NAV))?

<ESA\_QUESTION\_PKID\_29>

Past performance does not take into account the biometric costs that are included in the future scenarios. Some clarification may be needed to avoid any confusion of the client.

<ESA\_QUESTION\_PKID\_29>

1. : Are you of the opinion that an additional narrative is required to explain the relationship between past performance and future performance scenarios?

<ESA\_QUESTION\_PKID\_30>

Yes, it would be required.

<ESA\_QUESTION\_PKID\_30>

1. : Do you see merit in further specifying the cases where the UCITS/AIF should be considered as being managed in reference to a benchmark, taking into account the provisions of the ESMA Questions and Answers on the application of the UCITS Directive[[6]](#footnote-7)?

<ESA\_QUESTION\_PKID\_31>

We would need more time to reply to this question as we would need to perform further analysis of this proposal.

<ESA\_QUESTION\_PKID\_31>

1. : Do you see the need to add additional provisions for linear unit-linked insurance-based investment products or linear internal funds?

<ESA\_QUESTION\_PKID\_32>

We would need more time to reply to this question as we would need to perform further analysis of this proposal.

<ESA\_QUESTION\_PKID\_32>

1. : Do you agree that a fixed intermediate time period / exit point should be used instead of the current half the recommended holding period to better facilitate comparability?

<ESA\_QUESTION\_PKID\_33>

We believe that negative transaction costs should not be reflected. In our opinion, when the figure resulted from the calculation is negative, it should be reported as “zero”. It is also considered that for the calculation of the current transaction costs, the costs of the previous year should be taken instead of the three previous years, as proposed by the ESAs.

<ESA\_QUESTION\_PKID\_33>

1. : In this case (of a fixed intermediate time period), do you agree to show costs if the investor would exit after 5 years for all PRIIPs with a recommended holding period of at least 8 years? Or do you prefer a different approach such as:

<ESA\_QUESTION\_PKID\_34>

As long as it follows a clear rule, we support any of the above.

<ESA\_QUESTION\_PKID\_34>

1. : Do you think it would be relevant to either (i) use an annual average cost figure at the recommended holding period, or (ii) to present both an annual average cost figure and a total (accumulated) costs figure?

<ESA\_QUESTION\_PKID\_35>

Using an annual average cost figure at the recommended holding period favours comparability between products with different RHP.

<ESA\_QUESTION\_PKID\_35>

1. : Do you think that it would be helpful, in particular for MiFID products, to also include the total costs as a percentage of the investment amount?

<ESA\_QUESTION\_PKID\_36>

We do not support showing the total costs as a percentage since this could lead to confusion with the impact on return already expressed as a percentage. Furthermore, as mentioned broader in our answer to Q 7, we think that it is desirable to harmonize the cost presentations under the PRIIPs Regulation and MiFID II. Therefore, both sets of rules should be stronger aligned so that, for example, the ex-ante cost statement is consistent with the cost disclosure in the PRIIPs KID. The alignment should be based on the MiFID II approach as, inter alia, the distributor which is responsible for the cost statement under MiFID is not aware of the cash flow of the moderate scenario, which is necessary in order to calculate the RIY under PRIIPs. Therefore, the costs under PRIIPs should be based on the assumption that there is no yield since this is the only way to align the costs under MiFID and PRIIPs. Furthermore, the handling of inducements should be aligned so that the figures in the ex-ante and in the KIDs are the same.

<ESA\_QUESTION\_PKID\_36>

1. : In this context, are there PRIIPs for which both performance fees and carried interests are applied?

<ESA\_QUESTION\_PKID\_37>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_37>

1. : Do you agree with this analysis from the ESAs? If yes, what are your views on the extent to which fees related to the management of the underlying real estate assets, i.e. the properties themselves, should be taken into account in the calculation of the cost indicators?

<ESA\_QUESTION\_PKID\_38>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_38>

1. : Do you agree with the ESAs’ preferred option 3 to revise the cost tables?

<ESA\_QUESTION\_PKID\_39>

No, not in the form presented. We have serious concerns with respect to the reduction in yield ("RIY") approach. Therefore, the RIY should be abolished (even if RIY allows for more comparability between products than showing figures in Euros). The RIY calculation can get quite complex and include components (e.g. opportunity costs) and a calculation method (internal rate of return) that are hard to comprehend for a retail investor. In addition, basing the cost calculation on the moderate scenario can have non-transparent effects on the RIY, i.e. a reconciliation of a RIY is only possible if the exact timing and level of cash flows of the moderate scenario path are known.

Therefore, we think it would be best to eliminate the cost disclosure requirements under the PRIIPs Regulation altogether, as the retail investor receives transparent information on costs and charges of the financial instrument in any case under the MiFID II cost transparency rules. Alternatively, we propose the usage of an annualized total expense ratio (TER) for products with a RHP over 1 year which will be consistent with MiFID II and leads to better comparability between products with different recommended holding periods.

<ESA\_QUESTION\_PKID\_39>

1. : If not, which option do you prefer, and why?

<ESA\_QUESTION\_PKID\_40>

In case the table has to be revised, we prefer option 1, as it shows RIY both in the aggregated view (table 1) and in the breakdown of different types of costs (table 2).

<ESA\_QUESTION\_PKID\_40>

1. : In particular, do you think that the proposed changes to the presentation of the impact of costs on the return in percentage terms (i.e. including reduction in return before and after costs) is an improvement on the current presentation?

<ESA\_QUESTION\_PKID\_41>

Please see our answer to Q 39.

<ESA\_QUESTION\_PKID\_41>

1. : Do you have other comments on the proposed changes to the cost tables?

<ESA\_QUESTION\_PKID\_42>

Please see our answer to Q 39.

<ESA\_QUESTION\_PKID\_42>

1. : What are your views on the appropriate levels of these thresholds? Please provide a justification for your response.

<ESA\_QUESTION\_PKID\_43>

We would need more time to reply to this question as we would need to perform further analysis of this proposal.

<ESA\_QUESTION\_PKID\_43>

1. : If UCITS would fall in the scope of the PRIIPs Regulation, do you agree that the coexistence of the UCITS KII (provided to professional investors under the UCITS Directive) and the PRIIPs KID (provided to retail investors under the PRIIPs Regulation) would be a negative outcome in terms of overall clarity and understandability of the EU disclosure requirements? Are you of the view that the co-legislators should therefore reconsider the need for professional investors to receive a UCITS KII, as the coexistence of a PRIIPs KID together with a UCITS KII (even if not targeted to the same types of investors) would indeed be confusing, given the differences in the way information on costs, risks and performance are presented in the documents? Alternatively, are you of the view that professional investors under the UCITS Directive should receive a PRIIPs KID (if UCITS would fall in the scope of the PRIIPs Regulation)?

<ESA\_QUESTION\_PKID\_44>

We believe that the coexistence of the UCITS KII and the PRIIPs KID would be a negative outcome in terms of overall clarity and understandability of the EU disclosure requirements.

Under PRIIPs, the European legislator has (correctly) decided that only retail investors need further information via a short product information while professional clients have enough knowledge and experience. This is in line with the appropriate test under MiFID II that allows to assume that professional clients have enough knowledge and experience (see Art.- 54 (3) and 56 (1) of Del Reg. 2017/565. Therefore, the KID should be the only information document and it should only be provided to retail investors for all products.

<ESA\_QUESTION\_PKID\_44>

1. : What are your views on the issue mentioned above for regular savings plans and the potential ways to address this issue?

<ESA\_QUESTION\_PKID\_45>

It should generally suffice if clients are provided with the KID when they make their investment decision. Providing a KID again for each of the automated additional purchases made under the savings plan is, on the other hand, unnecessary. Investors can, of course, obtain the current key investor information and the other sales documentation at any time both from their online broker and their distributor (and very often also on the internet via the websites of the respective capital management companies); the same would naturally apply to KIDs as well in the future. When concluding a savings plan, investors are advised that, and where, they can view or obtain revised KIDs. The requirement of Article 13(4) of the PRIIPs Regulation should therefore be deleted and replaced by clarification to the effect that the KID only has to be provided when an investment decision is made.

Should European legislators not consider the provision of a KID only once (when the contract is concluded) to be sufficient, distributors should be required to only provide KIDs periodically. This could be done by giving retail savings plan investors an up-to-date KID along with the annual portfolio statement. This would help to reduce costs while the investor regularly receives the current KID.

<ESA\_QUESTION\_PKID\_45>

1. : Do you agree that these requirements from Article 4 should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIFs?

<ESA\_QUESTION\_PKID\_46>

The requirements should not be extended to other types of PRIIPs since they are mainly fund-specific.

<ESA\_QUESTION\_PKID\_46>

1. : Do you agree that this requirement should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIF?

<ESA\_QUESTION\_PKID\_47>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_47>

1. : Do you agree that these requirements should be extended to all types of PRIIPs, or would you consider that they should be restricted to the Management Company of the UCITS or AIF?

<ESA\_QUESTION\_PKID\_48>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_48>

1. : Do you have any comments on the proposed approaches in relation to the analysis and proposals in this Section, and in particular on the extent to which some of the abovementioned requirements should be extended to other types of PRIIPs?

<ESA\_QUESTION\_PKID\_49>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_49>

1. : Do you think this proposal would be an improvement on the current approach?

<ESA\_QUESTION\_PKID\_50>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_50>

1. : Do you envisage significant practical challenges to apply this approach, for example for products which allow the investor to choose between a wide range or large number of options?

<ESA\_QUESTION\_PKID\_51>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_51>

1. : Do you see any risks or issues arising from this approach in relation to consumer understanding, for instance whether the consumer will understand that other combinations of investment options are also possible?

<ESA\_QUESTION\_PKID\_52>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_52>

1. : Do you think this proposal would be an improvement on the current approach?

<ESA\_QUESTION\_PKID\_53>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_53>

1. : Are there other approaches or revisions to the requirements for MOPs that should be considered?

<ESA\_QUESTION\_PKID\_54>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_54>

1. : Do you have any comments on the preliminary assessment of costs and benefits?

<ESA\_QUESTION\_PKID\_55>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_55>

1. : Are you able to provide information on the implementation costs of the proposed changes, in particular regarding, (1) the proposed revised methodology for performance scenarios (using a reference rate and asset specific risk premia), and (2) the overall changes to the KID template?

<ESA\_QUESTION\_PKID\_56>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_56>

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

<ESA\_QUESTION\_PKID\_57>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_57>

1. COMMISSION DELEGATED REGULATION (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents [↑](#footnote-ref-2)
2. Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ L 352, 9.12.2014, p. 1. [↑](#footnote-ref-3)
3. Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39. [↑](#footnote-ref-4)
4. See enclosure: Final report of February 2019 on the MiFID II/MiFIR/PRIIPs Regulation Impact Study: Effectiveness and Efficiency of New Regulations in the Context of Investor and Consumer Protection by Professor Stephan Paul (Chair of Finance and Banking at Ruhr-Universität Bochum) et al. for the German Banking Industry Committee. [↑](#footnote-ref-5)
5. See ESMA: Q&A on MiFID II and MiFIR investor protection and intermediaries topics (ESMA 35-43-349), section 9, Information on costs and charges, answer to question 7. [↑](#footnote-ref-6)
6. See “Section II – Key Investor Information Document (KIID) for UCITS” (in particular, Q&A 8) of the Q&A document available at: https://www.esma.europa.eu/sites/default/files/library/esma34-43-392\_qa\_ucits\_directive.pdf [↑](#footnote-ref-7)