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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 | ICMA |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | International |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_PKID\_1>

ICMA is a not-for-profit membership association, headquartered in Switzerland, that serves the needs of its wide range of member firms in global capital markets. As at January 2020 it has more than 585 members in 62 countries. Among its members are private and public sector issuers, banks and securities houses, asset managers and other investors, capital market infrastructure providers, central banks, law firms and others. European Transparency Register #0223480577-59. See: [www.icmagroup.org](http://www.icmagroup.org).

ICMA’s response to this consultation is exclusively focusing on introductory comments and question 43.

Introductory comments are drafted on behalf of ICMA’s primary market constituency comprised of banks that lead-manage syndicated debt securities issues throughout Europe. This constituency deliberates principally through:

* the [ICMA Primary Market Practices Committee](https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Primary-Markets/primary-market-committees/icma-primary-market-practices-committee/), which gathers the heads and senior members of the syndicate desks of a number of ICMA member banks active in lead-managing syndicated debt securities issues in Europe; and
* the [ICMA Legal and Documentation Committee](https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Primary-Markets/primary-market-committees/icma-legal-and-documentation-committee/), which gathers the heads and senior members of the legal transaction management teams of a number of ICMA member banks active in lead-managing syndicated debt securities issues in Europe.

**1.Vanilla bonds / No response on KID content** – The ESAs stated, in their July 2018 letter to the European Commission (JC-2018-21), that *“the ESAs’ draft regulatory technical standards were prepared on [the] basis”* that *“the intention of the Regulation, as clearly expressed in Recitals 6 and 7 of the Regulation, [is] to address packaged or wrapped products rather than assets which are held directly, such as shares and non-structured bonds”*. ICMA is consequently not responding to the specific questions in this consultation about the PRIIPs Delegated Regulation (that was based on the ESAs’ draft regulatory technical standards), on the basis (and in the absence of any contrary indication) that this consultation has similarly not been prepared in view of such vanilla bonds.

**2.Vanilla bonds / scope still problematic** – Notwithstanding the above, PRIIPs’ product scope has remained a major concern in the vanilla bond markets as outlined in the above ESAs’ letter and in ICMA’s [September 2018 response](https://www.icmagroup.org/assets/documents/Regulatory/Primary-Markets/FCA-CFI---ICMA-Resp-2018-09-v3-280918.pdf) to a UK FCA Call for Input. The 24 October Joint ESA Supervisory Statement (JC-2019-64) is a helpful step in the right direction to reassure the markets that vanilla bonds are indeed out of scope of the PRIIPs Regulation. However, differing views and so uncertainty endure in the market as to what may be interpreted as ‘packaged’ or not, with significant ongoing reluctance to make vanilla bonds directly available to EEA retail investors. In this respect, the value of supervisory statements may not only be limited substantively (by the extent of their wording) but also technically (by potentially addressing to an extent liability to regulatory enforcement under administrative law but having no scope to address liability to investors under civil law). Should the European Commission feel that EEA retail investors should be generally able to directly invest in vanilla bonds, then it would need to ensure the PRIIPs legislation itself is clearly understood to exclude vanilla bonds (though there are also other disincentives to retail supply notably under the Prospectus Regulation and MiFID product governance). ICMA would be happy to assist in developing workable options for the European Commission to achieve this, including (if it so wishes) without having to adopt any view on individual product features.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_11>

1. : How should share buyback rates be estimated?

<ESA\_QUESTION\_PKID\_12>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_23>

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

<ESA\_QUESTION\_PKID\_24>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_25>

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

<ESA\_QUESTION\_PKID\_26>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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[[4]](#footnote-5)?

<ESA\_QUESTION\_PKID\_31>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_39>

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

<ESA\_QUESTION\_PKID\_40>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_41>

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

<ESA\_QUESTION\_PKID\_42>

TYPE YOUR TEXT HERE

<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>

The response to question 43 is drafted on behalf of ICMA’s Asset Management and Investors Council (AMIC) which was established in March 2008 to represent the buy-side members of the ICMA membership.

AMIC welcome the opportunity to comment on the amendments the ESAs are considering recommending to the European Commission regarding PRIIPs RTS.

For the purpose of this consultation we have decided to focus on the review of the transaction cost methodology, which is in our view a crucial issue, given the confusion created by contradictory provisions across the EU (MiFID, IDD, PRIIPs and national provisions) and the potential knock-on effect on future EU rules.

We would like to start by stating that, contrary to explicit costs, implicit transactions costs are not a charge to investors but reflect the cost of investing in markets which are deducted from reported fund performance and fully reflected in performance statements. Interests of the end investors and the PRIIP manufacturer are de facto aligned as they are both seeking positive performance, best execution and minimized cost in order to enhance returns. A fund with lower transaction costs will not necessarily generate better performance which is what matters in the end to allow investors to meet their objectives. Given that best execution is already tackled by MiFID, PRIIPs should rather focus on comparability and understanding of investment solutions available to retail investors.

It should also be acknowledged that measuring and interpreting implicit transaction costs are not straightforward: most methodologies (including the slippage methodology currently required under PRIIPs) are prone to technical bias and interpreting results can be extremely challenging. If there is no disagreement over what constitutes explicit transaction costs, it is still impossible to assert that a single methodology can be used to capture precisely implicit transaction costs across all asset classes. Regardless of the methodology used, the PRIIPs KID will provide an estimation rather than a 100% accurate figure. Bearing this in mind and given that this measurement has a limited added value for the end investors, the goal of the ESAs and the EC’s prime objective with this review should be to design a straightforward easy to implement framework providing realistic, transparent and meaningful estimates for end investors and which aligns with the MiFID requirements, given that PRIIPs products are predominantly sold using intermediaries.

Furthermore it should be made clear that the current methodology, chosen in 2017, to compute implicit transaction costs (namely the slippage approach), which produces misleading results (i.e. negative and inflated transaction costs) and can be subject to moral hazard as we explain below, is not required by level 1 but was introduced by level 2 measures. Despite the limitations highlighted above, the ESAs have proposed that market movements (“slippage” – i.e. the time between the order and its execution) should be considered a cost and should be added to the market spread. Attributing precise reasons to the change in price between the order and the execution is simply not feasible (i.e. it’s impossible to be sure that the price movement is due to the execution of a specific order, so called “market impact”). For these reasons it was decided under MiFID and IDD that underlying market risks” (i.e. market movements) should not be considered a cost.

We welcome the changes proposed by the ESAs in the consultation with the introduction of implicit transaction costs based on half spread but believe that these should be taken a step further, and that the flawed slippage approach should be eliminated for all asset classes, given that it factors in a lot of bias and approximations. Disclosures that are based on the slippage methodology are highly volatile and strongly influenced by many factors: it is dependent on the benchmark price used to calculate the slippage which cannot be harmonized across asset classes and all funds, the trading strategies and timing (limit order, immediate execution, buy-sell vs bull-bear market), which can lead to having the same execution price and therefore the same economic impact but completely different slippage costs. By its design, the slippage approach requires the use of “fallbacks” to cover all the cases where an actual arrival price is not available. These fallbacks have no economic relevance and generate irrelevant implicit transaction cost figures. The slippage methodology does not work without historical data and is inconsistent with all available methods to estimate transaction costs ex-ante, such as the method designed for new PRIIPs in point 21 of annex VI of the delegated regulation. Due to the volatility of the slippage methodology, there is no correlation between the costs estimated ex-ante using the new PRIIPs methodology and the results of the slippage approach. Lastly and more importantly the slippage methodology can produce negative transaction costs, which are counterintuitive and misleading for end investors. The argument in support of the slippage calculation, that with better quality benchmarks the transaction cost reports will become more stable and negative costs will disappear, has been invalidated by several empirical studies. Analysis of large samples of transactions of equity instruments shows that the slippage approach results in negative implicit transaction costs for about 50% of transaction where an actual mid-market prices is available, and creates very volatile transaction costs, which cannot convey any meaningful information to the investors.

Although the proposed draft RTS under option 1 are trying to answer some of the concerns raised previously (data availability for OTC transactions, sample size…) the slippage approach, with its major drawbacks, is kept. The proposal to avoid negative cost is unsatisfactory as it could lead to a false and inflated representation of costs, thus failing to comply with the level 1 text which requires that misleading information must not be provided.

We therefore recommend allowing the use of the spread methodology across all asset classes and trading venues by aligning the PRIIPs RTS with MIFID and IDD. This approach also refers to indirect costs but removes many of the statistical impediments under the slippage methodology and the risk of disclosing misleading negative transactions costs. The spread methodology has the advantage that it is more suitable for ex-ante cost disclosures (and therefore the PRIIPs KID) that provide information about prospective investments.

We welcome the principle of having a simplified approach in the calculation of implicit transaction costs, however we believe that this should be extended to illiquid listed instruments and designed to reduce the burden of calculation where there is little impact on the overall cost disclosure, which ensures that the information communicated to the investor remains of high quality and not misleading.

In the context of these draft RTS, our proposal could be achieved by amending option 1 or 2 as follows:

**Option 1**

8. The aggregate transaction costs for a PRIIP shall be calculated as the sum of the transaction costs as calculated in accordance with points 9 to 29 of this Annex in the base currency of the PRIIP for all individual transactions undertaken by the PRIIP in the specified period. This sum shall be converted into a percentage by dividing by the average net assets of the PRIIP over the same period. When relevant to accurately reflect the actual ratio of transaction costs, the explicit costs ratio could be measured at a higher frequency (months or quarters, for example). In such instances, the transaction cost percentage shall be the sum of the annualized percentages calculated over shorter periods.

~~9.Where implicit transaction costs are negative, a minimum of explicit transaction costs shall be disclosed~~.

[…]

15. The actual transaction costs for each transaction shall be calculated on the following basis:

1. for each purchase undertaken by the PRIIP, the mid-market price of the instrument at the time the purchase order is executed ~~transmitted to another person for execution~~ (the purchase ‘arrival price’) shall be subtracted from the net realised execution price of the transaction. The resulting value shall be multiplied by the number of units purchased;
2. for each sale undertaken by the PRIIP, the net realised execution price of the transaction shall be subtracted from the mid-market price of the instrument at the time the order to sell is executed ~~transmitted to another person for execution~~ (the sale ‘arrival price’). The resulting value shall be multiplied by the number of units sold.

16. The net realised execution price shall be determined as the price at which the transaction is executed, including all charges, commissions, taxes and other payments (such as anti-dilution levies) associated with the transaction, either directly or indirectly, where those payments are made from the assets of the PRIIP.

17. The arrival price shall be determined as the mid-market price of the investment at the time when the order is executed. ~~to transact is transmitted to another person. For orders that are transacted on a day that is not the day that the order was originally transmitted to another person, the arrival price shall be determined as the opening price of the investment on the day of the transaction or, where the opening price is not available, the previous closing price. Where a price is not available at the time when the order to transact is transmitted to another person (due to the order initiated outside market opening hours or in over-the-counter markets where there is no transparency of intra-day prices for example), the arrival price shall be determined as the~~ *~~most recently available price or, where a recent price is not available, as the~~* ~~opening price on the day of the transaction or, where the opening price is not available, the previous closing price. Where an order is executed without being transmitted to another person, the arrival price shall be determined as the mid-market price of the investment at the time when the transaction was executed.~~

18. Where information about the order execution time ~~when to transact is transmitted to another person~~ is not available (or not available to a sufficient level of accuracy), or where information about the mid-market price at that time is not available, it is permissible to ~~use as the arrival price the opening price of the investment on the day of the transaction or, where the opening price is not available, the previous closing price.~~calculate the transaction cost as described in point 20. ~~When calculating transaction costs using data prior to 31 December 2017, intra-day prices may be considered as not available.~~

19. Costs associated with transactions undertaken by PRIIPs and concerning financial instruments that fall within one of the categories referred to in items 4 to 10 of Section C of Annex I to Directive 2014/65/EU shall be calculated in the following way:

1. for instruments that are standardised and where there is regular trading in the instrument itself (for example an index future on a major equity index), transaction costs shall be calculated with reference to the instrument itself. The arrival price shall be determined as the mid-price of the instrument;
2. for linear instruments that are customised, and where there is no price transparency or regular trading in the instrument itself, transaction costs shall be calculated with reference to the underlying asset(s). The arrival price shall be calculated based on the price(s) of the underlying assets, using appropriate weightings if there is more than one underlying asset. Where the cost of transacting in the instrument is materially higher than the cost of transacting in the underlying asset, this must be reflected in the transaction cost calculation;
3. for non-linear instruments, it is permissible to calculate the transaction costs as the difference between the price paid or received for the instruments and the fair value of the instrument, on the basis described in points 36 to 46 of this Annex.

20. By way of derogation from points 13-19 of this Annex for transactions executed on an over-the-counter basis or transactions of illiquid listed instruments, the actual transaction costs ~~shall~~ may be calculated in the following way:

(a) Where a transaction is executed after bid prices and offer prices have been obtained from more than one potential counterparty, the arrival price shall be taken to be:

(i) If the best bid price is below the best offer price, the mid-point between the best bid price and best offer price;

(ii) If the best bid price is higher than the best offer price, the best bid price in the case of a sale or the best offer price in the case of a purchase.

(b) Where a transaction is executed without a representative set of several ~~both~~ bid ~~prices~~ and offer price pairs having been obtained, the transaction cost shall be calculated by multiplying the number of units transacted by half the value of the spread ~~between the bid price and the offer price of~~ calculated for the instrument. The value of this spread shall be calculated on the following basis:

(i) Where available, from a composite of live market bid/offer quotes; or

(ii) Where live market quotes are not available by reference, to spreads obtained for either previous transactions in assets bearing similar characteristics (e.g. duration, maturity, coupon, call-/ put-ability) and liquidity, using transactions previously executed by the manufacturer or data verified by an independent third-party, or from an independent third-party to value the asset, or from a standard spread table as defined in point 27.

21. In calculating the costs associated with orders that are initially entered into an auction, the arrival price shall be calculated as the mid-price immediately prior to the auction.

~~22.By way of derogation from points 13-21 of this Annex, where a product undertakes fewer than [250] transactions in a three-year period, or where the total consideration for all transactions undertaken over 3 years is less than [25%] of the net asset value of the product, the manager may calculate transaction costs using the methodology described in point 20.~~

22.By way of derogation from points 13-21 of this Annex, the manager may calculate transaction costs using the methodology described in point 20, provided that at least one of the following conditions are met:

i. the total consideration for the transactions benefiting from this derogation is less than [10%] of the total consideration for all transactions undertaken during the calculation period;

ii. the total transaction costs calculated using the methodology described in point 20 for the transactions benefiting from this derogation is less than [2 basis points] or less than [5%] of the product total recurring costs.

**Option 2**

12. In addition, other charges, which are not explicit costs, impact the overall performance of the PRIIP when acquiring or disposing of underlying assets. These are deemed implicit costs and shall be disclosed by the manufacturer of the PRIIP to demonstrate how transactions are executed on terms that are most favourable to the client.

13. Implicit costs shall be calculated as the sum of such individual charges incurred by the PRIIP over the ~~previous three years~~ calculation period for all individual transactions undertaken by the PRIIP. This sum of implicit transaction costs shall be converted into a percentage as specified in point 8. ~~They shall be calculated in the base currency of the PRIIP, and averaged over one year.~~ ~~Where these figures are negative, implicit costs shall be deemed to be zero such that the level of transaction costs cannot be less than the amount of explicit costs.~~ When relevant to accurately reflect the actual ratio of transaction costs, this conversion into a percentage may be performed at a higher frequency than the transaction costs calculation period (e.g. daily, monthly, quarterly). In such instances, the transaction cost percentage shall be the sum of the annualized percentages calculated over shorter periods.

14. Any and all processes developed by the PRIIP manufacturer to manage, mitigate and measure implicit costs shall be fit for purpose and documented in a clear and sufficiently detailed manner. For all asset classes and trading venues, implicit costs shall be identified by comparing the execution price recorded for a specific transaction with ~~a suitable reference price such as~~ the mid-market price of the investment when the transaction was executed. For instruments where mid-market price is not available or not representative, the implicit transaction cost should be assessed using an alternative methodology, such as implicit transaction costs from similar representative transactions, or standardized spread tables. The identification of a suitable reference price shall be duly recorded and follow the approaches set out in points (a) and (b) in a manner that is consistent with documented internal procedures of the PRIIP manufacturer to manage, mitigate and measure implicit costs, applied consistently across transaction types.

**~~OTC transactions~~**

15. Where the manufacturer has obtained two-way executable prices from multiple counterparties or where live executable prices are available, implicit transaction costs shall be measured by reference to such prices. In any such case, the number of units traded shall be multiplied by either the reference price of the instrument subtracted from the execution price for each purchase undertaken by the PRIIP or the execution price subtracted from the reference price of the instrument for each sale undertaken by the PRIIP;

16. By way of derogation from points 14 and 15, where the manufacturer is able to demonstrate that the transaction data used is statistically meaningful, sufficiently granular and proper governance and controls are in place to ensure that the data is sufficiently representative of the actual trade, implicit transaction costs shall be measured by reference to prices obtained for previous transactions in assets bearing similar characteristics (e.g. duration, maturity, coupon, call- / put-ability) and liquidity, using transactions previously executed by the manufacturer or a third party or using available indexes.

~~This derogation shall apply in all cases where a manufacturer undertakes fewer than [250] transactions in a three-year period for an individual PRIIP, or where the total consideration for all transactions undertaken over 3 years is less than [25%] of the net asset value of the product.~~

This derogation may apply when at least one of the following conditions are met:

i. the total consideration for the transactions benefiting from this derogation is less than [10%] of the total consideration for all transactions undertaken during the calculation period;

ii. the total transaction costs calculated using the methodology described in point 20 for the transactions benefiting from this derogation is less than [2-5 basis points] or less than [5%] of the product total recurring costs during the calculation period.

**For transactions negotiated on platform,**

17. implicit transaction costs shall be measured as set out in paragraph 14, or:

-by the reference to the mid-market price of the instrument at the time the order is ~~transmitted by the portfolio manager or the trader~~ executed;

-if justified by the manufacturer on the basis of the asset type or liquidity or availability of market data, by reference to a relevant intraday mid-price available for the day of the transaction;

- by reference to ~~the opening or previous closing price for that security where relevant~~ a relevant half spread.

In any such case, the number of units traded shall be multiplied by either the reference price of the instrument subtracted from the execution price for each purchase undertaken by the PRIIP or the execution price subtracted from the reference price of the instrument for each sale undertaken by the PRIIP.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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 “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-5)