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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:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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 | DSGV – German Savings Banks Association and VÖB - Association of German Public Banks |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Germany |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_PKID\_1>

The Deutscher Sparkassen- und Giroverband[[4]](#footnote-5) and the Bundesverband Öffentlicher Banken (VÖB)[[5]](#footnote-6) welcome the opportunity to reply to the Consultation Paper. From the perspective of the German savings banks and public banks the review of the PRIIP regulation is very important as the current requirements cause many problems both for investors and banks.

Therefore, we are grateful that the ESAs have undertaken a thorough examination how to improve the KIDs and do not restrict the consultation on certain aspects. Due to the amount of problems caused by the current requirements we strongly advocate not to restrict the review to level 2 since the source of many problems result from level 1 requirements.

If the ESAs are of the opinion that certain aspects can only be improved by modifying level I, we would like to encourage the ESAs to submit proposals in this regard.

<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>

The standard provided for in Article 14(2)(a) of the PRIIPs Regulation, according to which the KID in principle has to be provided on paper unless the retail investor requests otherwise, should be reversed in favour of priority for electronic means. Consequently, the KID should in principle be made available electronically and on paper only on request. In this way, the legislator would take account of the increasing digitisation and the parallel sustainability initiatives (in this respect, also see answer to question 5). If priority of electronic provision is not desired, provision on paper and electronically should at least be placed on an equal footing.

A further barrier to digital solutions is the current version of Article 14(6) of the PRIIPs Regulation. Its second sentence should be amended to the effect that evidence of online access can also be provided in a way other than by providing an e-mail address. For example, participation in the electronic mailbox system of a bank or savings bank should suffice for this purpose.

<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. Since the content of the KIDs is not suitable for IT-based extraction, other formats have been developed on the market for how the manufacturers provide the information to the distributors for their processes. On the German market, this takes place through central databases. Standardisation of data needed for sales processes for the European market as a whole is in ongoing discussion.

There is therefore no need to adapt the KIDs so that their content can be extracted. Adaptations in this respect would entail unnecessary and enormously expensive implementation efforts when there is no demand from the distributors. For these reasons, the idea should not be pursued further.

<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>

The content of the key information documents (KIDs) drawn up according to the legal requirements is problematic at various points, which confuses investors more than it helps them. KIDs therefore rightly come in for massive criticism – including precisely by consumer protectors. For this reason, it is essential for improvements to be worked out carefully. Regulations should also be amended at level I, if necessary. A real, lasting solution to a problem therefore takes precedence over a rapid, superficial solution. Irrespective of how quickly the regulator achieves a result, the addressees of the regulation must be left sufficient time for implementation.

In our view, the consequence will necessarily be that adaptations for the present PRIIPs can be applied only on entry into force of the fund regulations in January 2022.

<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>

A graduated introduction of new regulations is not really feasible for the reasons set out above. In our view, the immense problems caused by the existing provisions must be analysed very carefully to achieve improvements. The improvement measures should be the subject of public consultation and consumer testing to identify and remedy weaknesses. In this respect, it is a matter of thoroughness before speed!

Furthermore, sufficient time should be given prior to the implementation of adaptations. The transposition deadline after publication of the amended Delegated Regulation should not be less than one year under any circumstances. If this is assumed, transposition before 2022 is not really an option, so the aim should be for parallel entry into force for current PRIIPs and funds.

<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>

In our view, a large number of urgent problems of the PRIIPs Regulation are not discussed in the consultation paper (CP). These include the following points in particular:

1. **No restriction of the review to level II**

We support the start made by the European Supervisory Authorities (ESAs) on comprehensive examination of the problems which have arisen and devising of open-ended solutions. If it is found that the existing problems cannot be remedied without amendments to the level I text, the level I requirements must also be addressed. For investors, it would be hard to understand if they continue to receive erroneous KIDs and the reason given is that the mistakes result from level 1, which the EU-Commission refuses to amend. This is especially the case given that the PRIIPs Regulation contains no restriction of the review to level II requirements. On the contrary: according to the legal provisions, the review is also to cover the scope (see in particular Article 33(1), second subparagraph, PRIIPs Regulation). The restriction to level II is more of a political decision.

1. **Clarification of open issues concerning the scope**

The scope of the PRIIPs Regulation is not sufficiently clearly defined, which gives rise to doubt for a series of products as to whether or not these products are PRIIPs. These include, for example, simple bonds with make-whole clauses or OTC derivatives, which frequently are not investment products (on this subject, also see under 2.).

The European Supervisory Authorities (ESAs) have given guidance on bonds through publications (Joint ESA Supervisory Statement – application of scope of the PRIIPs Regulation to bonds of 24.10.2019 – JC-2019-64) in order to reduce the existing legal uncertainty. However, in the context of the review, it is essential that clarifications are given at legislative level.

1. **Adaptations with respect to funds**

The level I requirements must also be examined no later than on the extension of the PRIIPs Regulation to funds. The PRIIPs Regulation is manifestly not tailored to funds, which becomes clear in some provisions (e.g. the regulation on savings plans in Article 13(4), which is not appropriate for the mass-produced fund savings plan, also see answer to question 45).

1. **Placing provision on paper and electronically on an equal footing**

The PRIIPs Regulation gives precedence to provision of KIDs on paper. This high consumption of resources is incomprehensible in view of increasing digitisation and the sustainability objectives pursued by the EU. Here too, the level I legislator should act and provide for electronic provision of documents at least as an equivalent alternative (also see reply to question 1).

1. **Abandonment of the three-page restriction**

Several measures are proposed in the CP, which would lead to an extension of the content. Implementation of these supplements is possible only if the restriction of the KIDs to three pages is abandoned.

1. **Restriction of the scope to investment products**

The CP does not deal with OTC derivatives, even though the ESAs themselves stated in their Q&A that the existing requirements are not suitable and the KIDs drawn up on the basis of the legal requirements may cause the customers to misunderstand the product. In the Q&A, the ESAs correctly point out that the misleading presentation is primarily attributable to the fact that OTC derivatives are not investment products for which the customer pays an investment amount and receives repayment at the end. Since the current requirements are not appropriate, the ESAs offer the possibility to diverge from the level II requirements in certain cases. Verbatim, the ESAs state:[[6]](#footnote-7)

*“…. 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 recognised 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. ….”*

1. **Restriction of the scope to investment products**

The European legislator should take this correct conclusion of the European Supervisory Authorities as an opportunity to exclude OTC derivatives from the scope and to confine it to investment products. This would remove the need to modify the level II requirements.

1. **Modification of the level II requirements**

If a restriction of the scope to investment products is not wanted, the modifications drawn up by the ESAs should at least be included in the level II texts; in addition, further need for adaptation should be examined. For example, the calculation of performance and costs on the basis of a nominal amount (at level II, this refers to the investment amount) of EUR 10,000 is of little practical relevance, as in practice nominal amounts from EUR 500,000 are usually agreed.

In addition, the distinction from exchange-traded derivatives (ETDs) should be abandoned. Accordingly, at level II, generic KIDs should be confirmed for OTC derivatives. As a logical consequence, the performance scenarios for OTC derivatives, which on the present basis lead in some cases to absurd results which are confusing for the investor, should also be abandoned.

Because of the current KID´s imperfections many credit institutions use accompanying product descriptions to inform their customers about the specifics of their products.

1. **Historic costs**

According to point 83 of Annex VI to the PRIIPs RTS, information about the ratios that were applicable during previous years/periods is to be published at the location which is specified in the KID as the general source of further information for investors who require it.

This information offers no added value for retail investors, so the requirement, fulfilment of which gives rise to not inconsiderable expenditure, should be deleted.

1. **Competent authority (Article 8(3)(a) of the PRIIPs Regulation)**

While Article 8(3)(a) of the PRIIPs Regulation requires that, at the beginning of the PRIIPs, information about the competent authority of the PRIIP manufacturer is disclosed, the PRIIPs Regulation does not contain a definition of the competent authority. As a general rule, the competent authority should be the competent authority of the Member State where the PRIIP manufacturer is established (irrespective of whether that PRIIP manufacturer carries out activities across borders). This view has been confirmed by the European Commission in recital 22 in the Guidelines on the application of the PRIIPs Regulation.

Since some supervisory authorities in host Member States have challenged PRIIPs KIDs, which were prepared by manufacturers established in other Member States and asked the manufacturers to amend the PRIIPs KIDs, it should be clarified that supervisory authorities in host Member States may not require changes to PRIIPs KIDs whose manufacturer is established in another Member State.

5. 10,000 Euro or equivalent in another currency (Annex VI No. 90/91 of the PRIIPs Delegated Regulation)

In the case of PRIIPs denominated in non-euro currencies, an "amount of similar magnitude" to EUR 10,000 and which is clearly divisible by 1,000 is to be used for the calculation of performance scenarios and cost presentation. It remains, however, in our view unclear whether EUR 10,000 must be converted into the foreign currency at the respective exchange rate for foreign currency products.

Our proposes that the reference amounts should be fixed in the individual currencies so that PRIIPs denominated in the same currency can be compared as far as possible. These fixed reference amounts could be included directly in the revised PRIIPs Delegated Regulation, for example in a table. This table could then be updated, where necessary, and be published on the websites of the ESAs.

<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>

In our view, the legislator, with respect to presentation of the performance, should make a shift from the probabilistic scenarios to an illustrative what-if approach. Since there are no criteria with which the future market trend can be predicted, this should also not be suggested to the customer, who should merely be shown certain scenarios with the indication that their occurrence is just as certain or uncertain as all other possibilities and the scenarios are only designed to show how the product works. This applies in particular against the background of the indication by the ESAs on p. 25 of the CP that every probabilistic method has weaknesses which may lead to problems for certain products (in particular in the case of OTC derivatives).

In addition, it must be borne in mind that every approach that leads to an extension of the presentation makes compliance with the 3-page requirement difficult or impossible. This restriction to 3 pages should therefore be abandoned.

<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>

The intermediate scenarios lead in many cases to barely comprehensible results. In addition, the problem remains of information overload, which is also addressed at various points by the ESAs. For this reason, the intermediate scenarios should be abandoned.

If the cost statement is to remain part of the KID (also see under Q 36), the costs should be calculated on the basis of a performance of zero. This would contribute to synchronisation between the statement of product costs according to MiFID II and PRIIPs and in this way help to put an end to the circumstance, barely comprehensible to customers, that different product costs are shown for the same product under the same conditions (investment amount of EUR 10,000). It is not possible, on the basis of the intermediate scenario, for distributors to calculate the MiFID II costs (i.e. service costs in addition to product costs), which are known only to the issuer.

In addition, we suggest a uniform interpretation of the product costs according to MiFID II and PRIIPs.

<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 our opinion, presentation of a stress scenario offers no added value and should therefore be abandoned. This also contributes to resolving the much deplored information overload.

If the stress scenarios are nevertheless to be retained, they should at least be based on a uniform calculation method, i.e. the same drift should be applied in all scenarios.

<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>

No. Optimisation of the approach does not solve the fundamental problem of the lack of comprehensibility.

<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>

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<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>

The use of any “expected dividend rates” should not be permitted. In so far as dividends are relevant for the calculation, “historical dividends” should be used. .

<ESA\_QUESTION\_PKID\_11>

1. : How should share buyback rates be estimated?

<ESA\_QUESTION\_PKID\_12>

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<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>

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<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>

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<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>

The ESAs rightly recognise that, in spite of corrections, the proposed probabilistic approaches probably do not yield plausible results for all products. Instead of abandoning an approach which has been recognised as inappropriate, corrections to the results are proposed. This must be rejected for several reasons:

* The introduction of compensatory mechanisms for unseen methodogical faults would shift the responsibility for the contents of the KIDs and the methodology from the legislator to the manufacturers. Manufacturers would have to define which result that has been calculated according to the legal requirements can still be accepted and which result needs to be modified.
* Compensatory mechanisms would reduce comparability. Without clear requirements every manufacturer would define individual standards when the results need to be modified. This would mean that the approach of a highly standardized KID would be given up. As the ESAs rightly recognise, corrections result in impossibility to achieve the objective of comparability.
* The corrections only mitigate or conceal the problems of the probabilistic approach. However, the problems are not solved.
* The corrections eliminate high or low outliers. As a result, however, the figures may seem more realistic for the investor. This can lead to investors deriving payouts from the figures.
* The probabilistic approach would be reduced to absurdity if first probabilistic values were calculated on the basis of a complex procedure, but then the calculated values are not shown, but first modified.
* For the manufacturer, it would represent an enormous amount of effort first to calculate the probabilistic values – external advice is usually called in here – and then to correct the very expensively calculated values.

If the ESAs come to the conclusion that there is no probabilistic method that is suitable for all products, they should abandon the approach and switch to an illustrative approach (What-if-Aproach).

<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>

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<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>

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<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>

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<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>

See above.

<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>

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<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>

See above.

<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>

See above.

<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>

Since in particular investor protectors complain that too much information is provided in the KIDs, the existing scenarios should not be supplemented by further scenarios. In addition, it is doubtful whether investors understand the difference between probabilistic and illustrative methods. The legislator should therefore commit to one method. In the opinion of the public banks and savings banks, this method should be the illustrative what-if approach.

If the existing scenarios were to be supplemented, it is necessary in any case to abandon the 3-page requirement and to enable the manufacturers to make a 4-pages presentation.

<ESA\_QUESTION\_PKID\_23>

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

<ESA\_QUESTION\_PKID\_24>

In our view, probabilistic scenarios suggest promises of payouts which do not exist in this form. The fact that the performance is calculated according to complex specifications, which usually lead to inaccurate values with several decimal places, gives customers the impression of a secured return. The problems of this approach were already recognised in the final report of the ESAs of 8 February 2019 (see 4.2.2/as statement in Annex under 6) and led to the use of a so-called comprehension alert, which in turn creates uncertainty for customers.

The probabilistic approach should therefore be abandoned and replaced by illustrative examples which show investors how the product works by way of example. The presentation should be explained by relevant indications. The effect of these indications is reinforced if round figures are used routinely as a basis (such as, for example 5%), which underscores the illustrative nature.

<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>

Since illustrative presentations (What-If-Approach) have been used for all products apart from funds in the German market and – in contrast to the current methodology under PRIIPS – no problems have arisen, we assume that the approach is appropriate for all products.

<ESA\_QUESTION\_PKID\_25>

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

<ESA\_QUESTION\_PKID\_26>

It can be helpful for investors if they know how the product has performed in the past. However, it must also be made clear to them that the past performance does not say anything about the future performance. In this respect, a historical approach gives rise to the same problems as the current scenarios which are calculated on the basis of the past performance. Furthermore past performance scenarios cause further problems with regard to OTC derivatives and many certificates, as well as bonds, since they do not exist for these instruments. No approach should be chosen that is not suitable for a large number of PRIIPs.

<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>

If a methodology is considered to be reasonable, its implementation should not fail due to an opposing level I provision. Otherwise this would mean that investors continue to receive misleading information for the sole reason that the legislator has decided not to touch level I provisions (especially as the review is specifically also to cover level I, see above). This cannot be politically desirable.

<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>

See answer to question 26.

<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>

See answer to question 26.

<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>

See answer to question 26.

<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[[7]](#footnote-8)?

<ESA\_QUESTION\_PKID\_31>

See answer to question 26.

<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>

See answer to question 26.

<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>

Assuming that the cost presentation remains in the KID (see just below under Q. 36), it should be in the form of a monetary amount and a percentage, as under MiFID II. <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>

In the case of financial instruments as defined in MIFID, for which the customers receive *ex ante* cost information, the cost statement in the KID should be abandoned.

If, however, the duplication were to be maintained, as much synchronisation as possible should be created between MiFID and PRIIPs. The decisive factor here is not so much that the values to be shown (monetary amount and percentage) are present in both documents, but more that the costs are calculated in an identical manner. To this end, it is necessary to assume no return under PRIIPs and to treat inducements under MiFID II and PRIIP Regulations in an identical manner.

<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>

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<ESA\_QUESTION\_PKID\_38>

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

<ESA\_QUESTION\_PKID\_39>

It is our understanding, that the proposal will not bring about any alignment between the costs under MiFID and those under PRIIPs, as the costs under PRIIPs continue to be calculated under the assumption of a return (also see answer to question 36). This cannot be transferred to the MiFID cost information, as this is calculated by the distributors and the distributors do not know the performance values of the manufacturer. In addition, the different treatment of inducements is not addressed in the CP.

Until this fundamental problem is resolved, the review will not be successful in the field of product costs.

<ESA\_QUESTION\_PKID\_39>

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

<ESA\_QUESTION\_PKID\_40>

In our view, the costs – by way of analogy with the provisions of MiFID II – should be calculated without assuming a (fictitious) return. In addition, a statement must be made under PRIIPs on the treatment of inducements, which also applies under MiFID II.

<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>

TYPE YOUR TEXT HERE

<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>

The legislator took the sound decision in the PRIIPs Regulation that only retail investors need a KID. This is consistent with the presumption in Article 54(3) and Article 56(1) MiFID Delegated Regulation that professionals have a sufficient level of knowledge and experience. This presumption too shows that professional clients do not have an information deficit and therefore do not need any product information.

This must also apply for funds so that in future the KID is the general information document for funds that is used only in relation to retail investors.

<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>

The legislator has provided for a very practical regulation on the provision of key investor information (KII) for savings plans. This takes account of the fact that fund saving plans are mass-produced. For instance, one large German depositary alone has a total of some 4.5 million savings plans in portfolio. Electronic communication has been agreed with only just under 21% of the deposit holders concerned.

In addition, the provision takes account of the fact that the investor takes an investment decision only on concluding a savings plan. This correct assessment should also be transferred to the PRIIPs Regulation, if this is also applicable to funds in the future. This applies in particular against the background that in the PRIIPs Regulation too, it is clear at several points that the KID is to form the basis of the investment decision, see, for example:

* Recital 15: *“Retail investors should be provided with the information necessary for them to make an informed investment decision and compare different PRIIPs, ...”*
* Recital 17: “*The key information document should be drawn up in a standardised format which allows retail investors to compare different PRIIPs, ...”*
* The legislative intention is also expressed in the level II text (Delegated Regulation (EU) 2017/653), Article 17 of which contains detailed requirements on the timing of the delivery of the KID. Recital 24 states: “*The key information document should be made available to retail investors sufficiently prior to their investment decision, so that they are able to understand and take into account the relevant PRIIP information when making that decision. ...*”

In the case of savings plans, the customer makes an investment decision only on concluding the contract, but not on the execution of the individual savings instalments. After conclusion of the savings plan, the customer has the product (PRIIP) in portfolio and can therefore see, on the basis of this portfolio, how the product performs and which costs are incurred (annual cost reporting). In the event of market changes, he can also see how the product reacts to risk factors. There is therefore no need for additional provision of the KID.

If the legislator considers the provision of the KID to be necessary during the savings plan too, it should amend the current regulation (Article 13(4) PRIIP Regulation) to the effect that the corresponding KID is to be made available to the savings plan customer once a year (for example with the annual deposit statement/ex post cost reporting). This would enable the institutions to link the expensive mailing of the KID to other recurring information, such as for example the annual ex post cost reporting, and to avoid the unnecessary costs of providing it on its own.

<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>

No.

<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. The Deutscher Sparkassen- und Giroverband (DSGV – German Savings Banks Association) is the umbrella organisation of the Sparkassen-Finanzgruppe (Savings Banks Finance Group). The organisation includes 379 savings banks, five Landesbank Groups, DekaBank, nine Landesbausparkassen, eleven direct insurer groups of the savings banks, and many other financial service providers. [↑](#footnote-ref-5)
5. The Association of German Public Banks – Bundesverband Öffentlicher Banken Deutschlands, VÖB – is a leading industry association in the German banking industry. It represents 61 member institutions including the regional banks (Landesbanken) as well as the development banks owned by the federal and state governments. [↑](#footnote-ref-6)
6. ESAs: Q&A on the PRIIPs Key Information Document (KID) (JC 2017 49), “Derivatives” Q 4. [↑](#footnote-ref-7)
7. 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-8)