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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 | Austrian Federal Economic Chamber, Division Bank and Insurance |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Austria |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_PKID\_1>

We welcome the opportunity to comment on the ESAs consultation paper regarding proposals for changes on the RTS complementing the PRIIPs regulation. Before commenting in detail to some of the questions in the consultation paper we would like to take the opportunity to make some general comments:

We strongly call on the ESA to assess properly whether the proposed changes would lead to legal uncertainty for providers. Especially insurance contracts are very long-term contracts. Unclear provisions that are not tested properly for all products would expose insurance companies to a high level of legal risks.

We would also like to draw the attention to the fact that, the more information requirements are standardised across all financial products and all financial providers, the more the offer for customers will be limited. Standardisation of information would lead to a standardisation of products that will not meet the customers’ needs and thus is not in the interest of consumers.

In addition, the adoption of amendments should be carried out in a single step to avoid multiple costs of implementation.

<ESA\_COMMENT\_PKID\_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 principle not, but depending on the complexity of some methodological requirements, substantial implementation and adjustment efforts may reduce the appetite to go for a digital solution.

From our point of view, this review could establish a new basis for the way, how information is presented to clients. In opposition to the current way of essentially providing clients with paper version of documents and with another durable medium than paper only with explicit client consent, a reversion of this approach could be made. So according to the revised approach, 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. This approach would not only makes sense and be justified in view of the increasing importance of using digital media, but would also seem to be a logical consequence towards a continuing digitization. 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>

* : 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>

It depends on the distribution partner, if such an IT tool is used or accepted as , there are already existing platforms and templates for data exchange between manufacturers & distributors. As different technical standards are in place, which have been implemented so far already, a new requirement for a publication format would lead to additional implementing efforts and costs.

The relevant PRIIPs KID data is generally already available in a standardised form via EPT/CEPT. If data should be extracted from the KID itself (i.e. a KID in pdf format), the concrete answer will depend on technical aspects, particularly the respective software necessary. This would obviously also trigger potential implementation aspects and costs or data security considerations.

<ESA\_QUESTION\_PKID\_2>

* : 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>

All potential changes should be implemented at the beginning of 2022 (also for existing PRIIPs). This should allow the institutions in scope, to have the possibility to consider necessary changes and to implement these accordingly. This seems to be more effectively achieved, if there is enough time to make necessary technical implementations.

However, the ESAs should take the necessary time to develop sound, meaningful and workable solutions and methodologies that are proven to improve consumer understanding effectively and to fit the diverse PRIIPs.

At the same time, we do not support interim solutions. Interim solutions would increase legal uncertainty for companies and create additional compliance costs, without giving consumers a substantially better understanding of the products.

In any case, the deadline for the implementation by the industry should be dynamic, as in the PEPP Regulation. This means that the deadline for the implementation by the industry should be 12 months from the publication of the targeted changes in the Official Journal. Changes to the RTS should be only effective at the time when the exemption for UCITS funds from the application of the PRIIPs regulation expires. <ESA\_QUESTION\_PKID\_3>

* : 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>

No. We do not see any merit in a graduated approach for the implementation of new regulations and requirements. It should be implemented at the beginning of 2022. The rationale behind this, is, that different aspects depend on each other. This again makes it necessary to implement all at the same time and not gradually step by step. A step by step implementation might cause, that considerations for other points, which will come into force at a later point in time, might not be recognised or might be recognised too late. <ESA\_QUESTION\_PKID\_4>

* : 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>

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 costs”, 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 to differentiate these wordings and to use different wordings in the context of PRIIPs and in the context of MiFID.

The consultation does not mention the special issues of **OTC derivatives**. In fact OTC derivatives (for hedging purposes) are  non-investment products, which should not be in scope of PRIIP at all. We understand that in the course of the current consultations there are no changes in level 1 texts in the scope, as this would prolong the discussions and the process of improving PRIIP requirements. So we limit our proposals to those topics, which also can be solved on level 2.

In this context we would like to make the following points:

Although ESMA decided that for OTC derivatives generic KIDs can be handed out, we must bear in mind that OTC derivatives are tailor-made, especially those that are entered into for risk management purposes, which makes it difficult to anticipate any potential structure. Many terms are at the option of the clients and tailored to their very needs, such as, for instance, duration, nominal amount, or the insertion of any floor and/or cap. In the rarest of cases there will be a high level of standardization; due to the number of potential combinations of alternatives, there will be hundreds of different KIDs for the same product.

Not that there will be a misunderstanding, we are, never the less, of the view that generic KID should be allowed. However, the specifications in the RTS must be adapted to these special circumstances otherwise the clients will receive KID which are either non-transparent or misleading.

We would like to verify this using the following example:

If a client wants an OTC swap there are several possibilities: the swap can be combined with or without an upfront fee; with or without regular payments, with or without caps and/or floors. At the end it will always the same product, namely a swap, but the KID will be different depending which combination will be chosen.

Status Quo: zero premium products (no upfront fee/investment) are treated notional based, other products are treated premium based (premium seen as an investment that is leveraged in order to invest as much as 10.000 EUR).

That introduces a discontinuity which can hardly be explained to customers:

Think e.g. of an interest rate swap:

\*) at market: no premium/upfront fee/investment amount: notional of 10.000 EUR has to be used for calculations (performance scenarios and costs).

\*) slightly off market: small premium/upfront fee/investment (say 0.05%), premium/upfront fee/investment amount has to be leveraged to an 'invested amount' of 10.000 EUR ==> notional of 20.000.000 EUR used for calculations (performance scenarios and costs)

Thus a more or less negligible change in the produce definition yields dramatically different performance and costs numbers which definitively don’t reflect reality.

Same reasoning applies for all other products which can be traded with or without premium/upfront fee/investment amount: IR collars, cross currency-swaps, FRAs, FX Forwards, FX Swaps, FX risk reversals, etc.

In recent weeks there has been a discussion whether the introduction of country-specific risk premiums might lead to better results. We are not convinced that this would lead to a better and more transparent outcome. In contrary we believe that this would lead to more misunderstanding and less comparability.

Finally, the different nature of OTC derivatives should also be reflected in the KID texts. The texts specified in the delegated acts are oriented towards investment products, but their wording cannot be adopted 1:1 for OTC derivatives as they are non-investment products (e.g. there is no “investment amount”)

In **Annex IV**, no. 22 of the PRIIPs Delegated Regulation, we believe **rounding the performance** to the nearest 10€ does not seem precise enough, for instance for a coupon of 3.15% per annum, we would need to round 10315€ to either 10320€ or 10310€. Hence we propose to round the numbers to the nearest euro.

We assume a typo in chapter 8, Annex IV, point 8 on page 59:

*“8. For* ***Category 2 PRIIPs*** *where the invested amount accrues over time, the 10th, 50th and 90th quantiles shall be read from an estimated distribution of values at the end of the recommended holding period generated using* ***a Monte Carlo simulation****. The Monte Carlo simulation shall consist of a minimum of 50,000 paths. The methodology for constructing each path is specified in points 9-10 below.”*

There is no use in conducting a Monte Carlo simulation for a fund savings plan, not least, because a savings plan does not have to be qualified as a stand-alone product (thus, not automatically producing a KID). We request a clarification respectively a correction of the PRIIPs category that was really meant.

**Flexibility regarding terms that have to be used in the PRIIPs-KID**

The RTS to the PRIIPs regulation give a tight legal framework for drafting the KID. Therefore, in many cases terms have to be used that are not suitable for IBIPs in national markets. On the one hand this causes legal uncertainty, on the other hand it is misleading for customers because terms in the PRIIPs KID don’t go along with (pre-)contractual terms required by national laws. Therefore, we urge ESAs to introduce more flexibility in order to use terms that are more common to IBIPs and to customers and that go along with national legal requirements. Example: early exit penalties (in German “Vertragsstrafen”): In Austria the term “Vertragsstrafen” has a different legal meaning than the meaning foreseen in the context of the PRIIPs-KID. Thus, insurance companies have to use a term that has a complete different legal meaning. In this case, surrender fee (in German “Rückkaufsabschlag”) would be the right term.

**Improving the information about insurance benefits**

According to Art. 2 (4) of the delegated act 2017/653 insurers have to show the overall premium, the biometric risk premium that forms part of that overall premium and either the impact of the biometric risk premium on the investment return at the end of the recommended holding period or the impact of the cost part of the biometric risk premium taken into account in the recurring costs of the ‘Costs over the time table’ calculated in accordance with Annex VII. Where the premium is paid in the form of a single lump sum, the details shall include the amount invested. Where the premium is paid periodically, the number of periodic payments, an estimation of the average biometric risk premium as a percentage of the annual premium, and an estimation of the average amount invested shall be included in the information.

This leads to an overload of information with regard to the risk premium which makes the disclosure intransparent for customers and difficult to understand.

In addition, we call for disclosing whether the PRIIP offers insurance benefits and if so, details of those insurance benefits, including the circumstances that would trigger them in all KIDs of all financial providers. The facultative option to inform about insurance benefits disables a direct comparison of PRIIPs with and without insurance benefits, as the KID of the latter won’t contain any information on it. Only a permanent information section allows for a direct product comparison.

<ESA\_QUESTION\_PKID\_5>

* : 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>

Regarding the additional columns in the proposed performance scenarios table on page 67 of the consultation paper, we do not see any benefit in including a column on the “estimated chance that [the] scenario occurs”. On the contrary, this is indeed an artificial forecast and the concept of probability might be misinterpreted by consumers, thus raising unnecessary legal and litigation risks for product manufacturers. It is also not clear how a consumer is expected to act on this information, given that the likelihood of a particular scenario occurring is entirely unknown.

Our responses are also reflected in the various answers ranging from the one to question 7 to the one to question 26.

For structured products with clear payout functions at maturity, an illustrative approach to future performance scenarios should be used. Otherwise, neither intermediate nor stress scenarios should be included. No past performance scenarios shall be used.

<ESA\_QUESTION\_PKID\_6>

* : 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>

Category 3 PRIIPs are not applicable for investment funds. The intermediate scenarios must be calculated anyway (as the data is needed for the CEPT), even if the results are not shown in the respective KID. Thus, the assumption of the intermediate scenario can still be used for the cost calculations.

We would welcome the deletion of intermediate performance scenarios for any category of PRIIPs. For the sake of consistency, the costs tables and MOPs tables should be amended accordingly, by removing references to intermediate time periods and showing costs only at the end of the recommended holding period (RHP). From a consumer perspective this would lead to a simplification of the PRIIPs KID and eliminates an overload of information improving the overall understanding of the KID.

Consequences of early surrenders are shown in the section “How long should I hold it and can I take money out early” of the PRIIPs KID.

In general, no intermediate scenarios should be included. No positive or negative performance assumption (i.e. 0 performance) shall be used for ‘What are the costs’ section.

<ESA\_QUESTION\_PKID\_7>

* : 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>

Yes, as it should be consistent to other scenarios, e.g. just disclosing results of the 2.5% or 5% percentile.

We welcome the cancellation of the stress scenario and the intermediate scenario within the KID (whereas at the same time some data are still useful for cost calculation, see answer to question 7 above).

The introduction of the additional information about a minimum guaranteed return as it is suggested in the consultation paper on page 68 is welcomed. It clearly enables the customer to get aware whether the product contains a certain level of guarantee. <ESA\_QUESTION\_PKID\_8>

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

<ESA\_QUESTION\_PKID\_9>

Foremost we would stress the need for a clarification concerning point 5.4. on page 19 respectively the table in point 12.1. as well as Annex IV point 7 and 8, which inherit the distinction for category 2 PRIIPs by pointing out the need to properly understand the following wording (page 19):

“The three broad classes of products are:

* *Funds and fund-like products which are purchased at a single point in time; and*
* *Funds and fund-like products where the investment accrues over time (e.g. regular premium insurance-based investment products); and*
* *Structured products and other structures where the pay-off profile is discontinuous or depends on distinct events over the life of the product*”

It would be helpful for implementation purposes, if it was made explicitly clear that either investment funds (UCITS, retail AIF) are in scope of the first bullet point or that investment funds savings plans are out of scope of the second bullet point.

Moreover, we want to point out that the reference rate should be the interest rate curve derived from the sovereign bond prices of the country of the assets. The screening of a well-diversified portfolio (e.g. MSCI All Country World index with approximately 50 countries) and the collection of the different country yields is time-consuming and difficult. Hence, we doubt the future comparability of PRIIPs, if there is a lack of determination of which rate has to be used. Furthermore, there is no description to be found within the consultation paper on how often the risk-free rate should be updated, like once a year or once a month.

The swap curves of the relevant currency could be used.

<ESA\_QUESTION\_PKID\_9>

* : 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>

A growth rate equivalent to the risk-free rate is fine for price return products (i.e. where the investor is NOT entitled to receive dividends). However, additionally, we would suggest to remove any discretionary component from the estimation by simplifying the equity risk premium (ERP) for total return products (i.e. where the investor is entitled to receive dividends etc.) to a long-term average value determined by e.g. the ESAs. This way, any potential difference in estimated dividends or buyback rates is prevented.

We doubt that the effort is in any relation to the potential outcome of the revised methodology. As mentioned above, the approach is time-consuming and complex to implement, particularly for mixed funds. Moreover, we want to highlight that the asset-specific risk premium for different types of assets as shown on page 19 are not correct for bonds (coupon rates). <ESA\_QUESTION\_PKID\_10>

* : 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>

Historical dividend rates can be averaged over any time span (which makes it also hard to choose) and are volatile, which again leads to concerns regarding the comparability of PRIIPs. Even in the case of purchasing estimated dividend rates, the outcomes may differ for the very same asset.

Moreover, we also want to take into consideration that if every company uses its own analyst’s reports as data sources, those figures will be even less comparable. The numbers could even be sugar-coated in the worst case. <ESA\_QUESTION\_PKID\_11>

* : How should share buyback rates be estimated?

<ESA\_QUESTION\_PKID\_12>

No, this seems to be impossible and would lead to less comparability. The reason therefore is, that there do not exist common data sources for share buyback rates.<ESA\_QUESTION\_PKID\_12>

* : 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>

There is general agreement with this approach. <ESA\_QUESTION\_PKID\_13>

* : 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>

The 5-year “history of daily returns” period to estimate the volatility is appropriate, due to the fact that everyone uses same data for same underlyings, while it allows comparability. However, for most investment funds it will not be possible to calculate the volatility via an option price, as there is not an option for every asset type.

<ESA\_QUESTION\_PKID\_14>

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

<ESA\_QUESTION\_PKID\_15>

We deem compensatory mechanisms essential. As the proposed approaches do not deliver realistic figures for any of the funds, assets etc. on the market, there must be a possibility to overwrite figures that are not realistic and would thus give a misleading picture to the customer. Against this background, the flaws of the proposed methodology are more than obvious.

However, we think compensatory mechanisms are not needed for Category 3 structured products.

<ESA\_QUESTION\_PKID\_15>

* : 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>

The possibility to adapt the numbers as mentioned in point 5.6. in the un/favourable scenario is at least considered to be practicable. <ESA\_QUESTION\_PKID\_16>

* : 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>

* : 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>

The simplified approach is way easier to implement . If the growth rates are predefined by the national competent authorities, the PRIIPs was comparable, too, lacking any cherry picking. The simplified probabilistic methodology of prescribed maximum growth rate per asset class is

better than a country specific reference rate (at least for equity). The latter is not possible to implement consistently across manufacturer (multi-country indices, dual stock listings…) but is worse than a probabilistic methodology using a currency specific reference rate, plus a fixed equity risk premium.

The paper mentioned in footnote 20 (page 28) contains a table (page 115/116) showing different growth rates for the same assets (from different sources). This seems to be another argument for the simplified approach as concerns comparability. The downside may be that the same growth rate for one asset class in all products could lead to unexpected results e.g. for minimum variance equity funds.

It is paramount that the ESA choice of methodology is deemed implementable by the structured product industry in a unified way.

<ESA\_QUESTION\_PKID\_18>

* : 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 consider it to be useful to have a fixed table of estimated growth rates provided by the regulator as there are two advantages for the implementation:

First, the comparability of investment funds is granted and second, the disproportionate effort concerning data availability in order to manage estimation of dividends for all possible country/sector-combinations as well as estimations of share-buy-back-rates does not arise.

We therefore propose a correction within the formula in Annex IV point 7 (on page 58) to compensate the thereby generated equability of different stock markets: *expected growth g* should be adjusted with an asset-class specific *matching coefficient a*. This coefficient a should be proportional to the VEV. This proposal would accommodate the fact that asset-classes with a higher volatility will (according to theory as well as empiricism) also show a higher performance. <ESA\_QUESTION\_PKID\_19>

* : 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>

The very long term products (over 10 years) and especially short-term (1 day to 3 months) it could be challenging to define probabilistic methodologies.

<ESA\_QUESTION\_PKID\_20>

* : 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>

Regarding the proposed use of the Sharpe ratio (option b on page 28), we want to point out that if the Sharpe ratio was used, it would be necessary to determine for which time span the risk adjusted performance is used, i.e. for one year. Moreover, a clarification regarding the recommended holding period would be useful. Nevertheless, although the use of the Sharpe ratio would be relatively easy to implement, there are certain reservations against the risk-free rate – as already expressed above in our answer to question 9 – which concern, among others, the chosen rate or the time horizon. <ESA\_QUESTION\_PKID\_21>

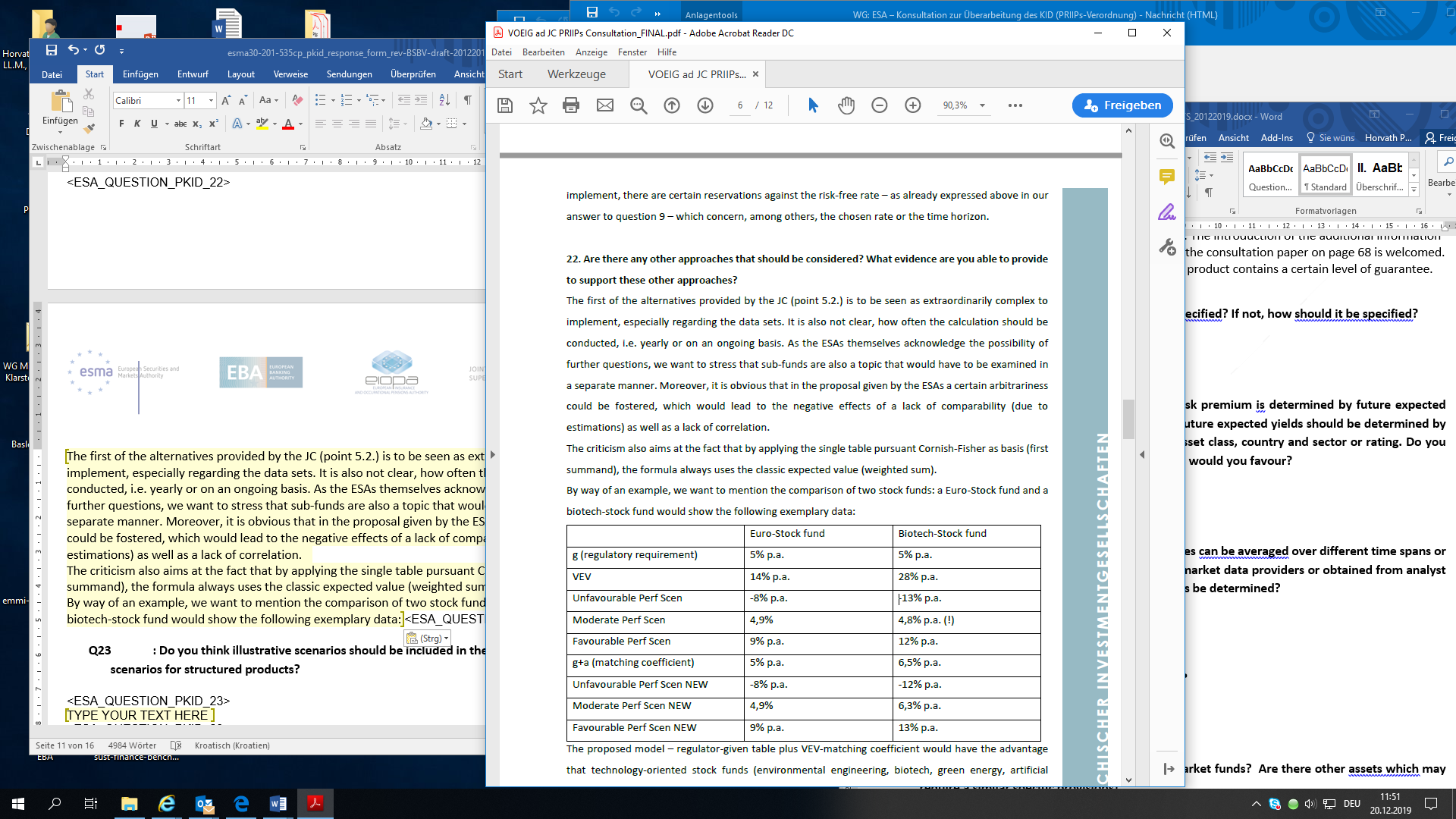
* : Are there any other approaches that should be considered? What evidence are you able to provide to support these other approaches?

<ESA\_QUESTION\_PKID\_22>

The first of the alternatives provided by the JC (point 5.2.) is to be seen as complex to implement, especially regarding the data sets. It is also not clear, how often the calculation should be conducted, i.e. yearly or on an ongoing basis. As the ESAs themselves acknowledge the possibility of further questions, we want to stress that sub-funds are also a topic that would have to be examined in a separate manner. Moreover, it is obvious that in the proposal given by the ESAs a certain arbitrariness could be fostered, which would lead to the negative effects of a lack of comparability (due to estimations) as well as a lack of correlation.

The criticism also aims at the fact that by applying the single table pursuant Cornish-Fisher as basis (first summand), the formula always uses the classic expected value (weighted sum).

By way of an example, we want to mention the comparison of two stock funds: a Euro-Stock fund and a biotech-stock fund would show the following exemplary data:



The proposed model – regulator-given table plus VEV-matching coefficient would have the advantage that technology-oriented stock funds (environmental engineering, biotech, green energy, artificial intelligence etc.) could compensate the disadvantage of higher volatility at least partially by means of an actually existing volatility rate. Otherwise, retail customers could be advised not to invest into seminal, but more volatile stock markets based on the focus on the unfavourable and the moderate scenario in the PRIIPs KID.

The calculation of the matching coefficient could be done by applying the following formula: a = Max(0, (VEV-0,16)\*0,125). For example, if VEV = 28%, then this would lead to a = (28%-16%)\*0,125 = 1,5%. Hence, instead of g\*T, the formula would be adjusted to (g+a)\*T.

Moreover, it would be useful if the regulator would foresee similar possibilities regarding the expectation of alternative investments by incorporating a similar matching coefficient.

The current discussions in the framework of the PRIIPs review and the EIOPA report on cost and performance show, that it is not possible to align information requirements EU-wide. The products are very different, customized and adapted to national needs over decades. Thus it is hardly not possible to define calculation methods for performance scenarios that are suitable for all financial products across the EU. We would welcome the introduction of a simple, transparent and comparable approach that works through the whole financial industry. Therefore “what if”-performance scenarios should be introduced. There should be at fixed performance percentages defined by the ESAs that vary according to the risk class of a product. Showing the performance of 0% through all risk classes and through all products would lead to high level of transparency and comparability since clients might be directly aware of the effects of costs.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Investment of 1000 Euros per year | performance: 6% | performance: 3% | performance 0% | performance: -3% |
| End of contract period | xx Euros | xx Euros | xx Euros | xx Euros |

The table should be accompanied by narrative explanations that these are sample calculations and the results are not binding.

<ESA\_QUESTION\_PKID\_22>

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

<ESA\_QUESTION\_PKID\_23>

No. We strongly recommend to present only the illustrative scenarios, without combination of the probabilistic scenario. This would only confuse the investor.<ESA\_QUESTION\_PKID\_23>

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

<ESA\_QUESTION\_PKID\_24>

Yes, definitely, as this is easily to understand for retail investors. The experience with German PIBs were much better than probabilistic scenarios in the KIDs.

<ESA\_QUESTION\_PKID\_24>

* : 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 agree with this approach using the existing definition of Category 3 PRIIPs, but as mentioned in Q23, we reject the combination of probabilistic and illustrative scenarios.

<ESA\_QUESTION\_PKID\_25>

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

<ESA\_QUESTION\_PKID\_26>

There seems to be no additional benefit in including past performance information into the KID because if past performance is to be included, at least the very same provisions that are already in place for UCITS KIID should be used. Furthermore, such inclusion would just trigger additional lack of consistency and comparability, particularly due to different rules for category 2 PRIIPs vs. category 1 and 3 PRIIPs. Moreover, the display of the data would become a big challenge against the background of the existing restriction to three pages for the PRIIPs KID. Hence, it can be expected that more questions would arise and additional information to explain past performance data would need find their way into the KID, such as the explanation regarding the difference between past performance and forward-looking scenarios. Consequently, the clarity and comprehensibility of the document would further decrease.

In general, it should be avoided that the client is confronted with an overload of information in die PRIIPs-KID. There is the danger that customers get confused by two different types of performance scenarios. Therefore, we generally call for a simplification of the presentation and calculation of performance scenarios. (See answer to question 18).

Regarding the ESAs proposal for including past performance for certain IBIPs it is not clear how the proposals starting from page 76 in the consultation paper should be applied to certain IBIPs since contract terms differ between funds and IBIPs.

As noted by the ESAs, it is also not clear how two different performance scenarios will fit with the requirement that PRIIPs KIDs do not exceed 3 pages in length.

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 a MiFID information on past performance and a PRIIPs information on past performance regarding the same product could lead to inconsistent results.

In addition, this is not applicable to structured products Category 3, since those do not have historical NAVs.

<ESA\_QUESTION\_PKID\_26>

* : 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>

No, the information is not necessary in the PRIIPs KID. <ESA\_QUESTION\_PKID\_27>

* : 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>

We do not consider this as an appropriate solution. <ESA\_QUESTION\_PKID\_28>

* : 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>

* : 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>

If past performance should be included, yes. An additional explanation would be necessary to explain the main differences between the potential outcomes and the historical values (as also mentioned above answer to question 26). <ESA\_QUESTION\_PKID\_30>

* : 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>

For the sake of consistency and coherence, it may make sense that the relevant provisions for UCITS/AIF-KIIDs are extended to the new PRIIPs-KIDs. <ESA\_QUESTION\_PKID\_31>

* : 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>

* : 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>

No, we do not agree. A calculation using half the recommended holding period is more appropriate and makes more sense.

Generally, we do not see a benefit in including intermediate time periods for presenting costs. We would welcome an approach to introduce more simplicity by removing the intermediate time periods also from cost section.

The most relevant information for customers is about cost over the whole contract period of a product. Presenting information on costs before the end of the contract period runs the risk that customers surrender early. In addition, information on the risks of early redemption is already included in the separate section on “How long should I hold it and can I take money out early?”. This enables PRIIPs manufacturers to give fuller details of any fees incurred for early exits.

In addition, fixing intermediate time periods runs the risk that the fixed time periods are not suitable for different products since the recommend investment horizons are very different across all financial products of all providers.

<ESA\_QUESTION\_PKID\_33>

* : 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>

See answer to question 33 above.

<ESA\_QUESTION\_PKID\_34>

* : 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>

We think, that the current approach is appropriate. In any case, further explanations of the selected figure would be necessary. <ESA\_QUESTION\_PKID\_35>

* : 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>

Yes, definitely, but even instead of RIY.

Any improved harmonization between PRIIPs and MiFID information in the framework of the coming MiFID II-review would highly be appreciated. From a practical perspective, calculations have to be made for and via the EPT anyways. Hence, different calculation principles cause different outcomes that must be displayed (and explained), thus even more confusion could be caused for the retail investor. <ESA\_QUESTION\_PKID\_36>

* : 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>

* : 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>

Generally speaking, we are in favour of harmonizing the cost indicator for real estate funds regarding the PRIIPS KID. To our mind the actual management of properties is not specific to the management of an investment fund in that it goes beyond the various activities connected with the collective investment of capital raised. In so far as the actual management of immovable property is intended to preserve and build up the assets invested, its objective is not specific to the activity of a special investment fund but is inherent in any type of investment (this distinction has already been made by the ECJ (C-595/13), reference 78 regarding real estate investment funds). We do not agree with the analysis from the ESAs. In our opinion the consideration of actual management fees (costs) of the underlying assets, which means of the real estate assets themselves, distorts the cost indicator and impairs the comparability instead of increasing it. The actual management fees for real estate assets borne by the owner may vary significantly due to various reasons. For example (i) depending on national leasing law or negotiating power the owner/landlord of a building may charge the management fees (in total or partially) to its tenants and no - resp. reduced - management fees apply; (ii) in case of vacancy management fees are borne by the owner/landlord; (iii) the complexity of the management and therefore, the costs for the management may vary depending on the type of asset (single-tenant, multi-tenant, residential, office, etc.). These are only a few reasons why actual management fees for real estate assets are volatile, depend on various parameters in terms of location, type of assets, etc., and are often not controllable by the fund manager. Consequently, a statement of these costs shows a snapshot of a current situation without validity for future costs. To our understanding the costs presented in PRIIPS shall enable the investors to understand the effect of aggregate and total costs of a product on the performance over the holding period and, in this respect, to compare different products. The consideration of real estate management costs in this cost calculation does not support this approach but increases the inconsistency between the cost indicators of the different products and creates more confusion amongst the investors. There is a clear distinction to be made between the management service costs charged by the management company (including delegated management services by third parties) and the costs which belong to the actual management of the properties of the funds. Actual management costs of the properties are costs which do not have to be included in the cost indicator. These costs are costs in connection with the utilization of properties and have to be borne by the investors and are directly reducing the yield of the investment. <ESA\_QUESTION\_PKID\_38>

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

<ESA\_QUESTION\_PKID\_39>

No. We do not believe that option 3 is an improvement on the current presentation of costs in the PRIIPs KID. In option 3, the first table only displays RIY in percentage, which is not well understood by investors. Also, the RIY is derived from cost in monetary terms, so displaying an RIY on its own is not easy to understand (table 1 in option 1 would be better).

It is true that RIY is a cost indicator that is applicable to all PRIIPs. It takes into account the impact of i) cost structure, ii) cost timing, iii) product duration on the internal rate of return (yield). Furthermore, RIY works for single and regular premium payments.

However, it would not make sense to use RIY in KID table 1 and a different cost indicator in KID table 2 as proposed, as there would be no correspondence between the 2 tables. The costs will not add up to the total costs in table 1 potentially confusing consumers as they would not understand the relation between the aggregated cost and the breakdown.

We also have concerns regarding the level of granularity in the proposed second table. This approach will overload consumers with information as they will receive 18 values in monetary terms and six percentage values.

<ESA\_QUESTION\_PKID\_39>

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

<ESA\_QUESTION\_PKID\_40>

The option 1 would be the favourite option and the only one complying with both MIFID II and the PRIIPs Level 1 text, for the following reasons:

* It provides continuity with the current presentation. Yet, for Category 3 structured securities, we would have preferred to have RIY replaced by a TER (as mentioned in Q36).
* The Option 1 table 1 provides clarity on the RIY computation, and shows Total cost in EUR (from which the RIY is derived),

Table 2 is simple enough for investors.

We would secondly refer to option 2, in doing so, we also refer to using the half bid/ask spread as still quite a practicable methodology. This can be explained by the fact that option 2 has the advantage that there is not a fixed reference value.

In this context we also appreciate the content of point 15 on page 101, which describes the method that would be easy to implement and supports our preference of option 2:

*“OTC transactions*

*15. Where the manufacturer has obtained 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;”*

We want to mention that the following points 16ff are to be seen critical and practically not feasible.

However, in general the proposed options do not to lead to satisfying solution for the current cost disclosure in the PRIIPs-KID. Disclosing more figures related to costs would lead to high degree of complexity generating confusion and misunderstanding by customers as well as legal uncertainty for providers. Therefore, the ESAs should rather aim to simplify the presentation of costs in order to enhance comprehensibility.

In addition, we would like to draw the attention to the fact that in all three options the description of transaction costs in the tables doesn’t fit to unit-linked life insurance products since in that case transactions costs might not be caused by the insurance companies. Thus the term “costs of us” is not appropriate.

<ESA\_QUESTION\_PKID\_40>

* : 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>

Yes, the reduction in yield is a complex concept for investors, showing the intermediate calculation steps (Return per year before cost, and Return per year after costs) makes it easier to understand, but it must be linked to the Total EUR cost from which the return after cost is derived. This is why we would prefer option 1. We are of the opinion that the display of the returns before and after costs would be an improvement. <ESA\_QUESTION\_PKID\_41>

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

<ESA\_QUESTION\_PKID\_42>

With regard to the calculation methodologies and the costs to be disclosed, there exist differences between the rules in MiFID II and in PRIIPs. These differences have a negative effect on the understandability of information for the client with regard to costs. Therefore the calculation methodologies for the costs in MiFID II and in PRIIPs should be harmonized in the framework of the coming MiFID II-review.

As a result, presenting same costs would much more consistent and could be easier explained to the investor.

<ESA\_QUESTION\_PKID\_42>

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

<ESA\_QUESTION\_PKID\_43>

The threshold shown in chapter 12.7.1., option 1, point 22 on page 97 should be higher for practical and market-specific reasons. <ESA\_QUESTION\_PKID\_43>

* : 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 agree that a future coexistence of both investor information documents would be detrimental to the overall clarity and comprehensiveness of EU disclosure requirements. Moreover, professional investors do not need any of the documents by definition. There is no use in including UCITS for professional investors into the PRIIPs regulation and thus inventing another duty that would (again) concern management companies exclusively. We do not see any sense in that and hence reject any regulation that does not aim at all PRIIPs in the same manner. <ESA\_QUESTION\_PKID\_44>

* : 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>

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<ESA\_QUESTION\_PKID\_45>

* : 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>

We would call for not extending UCITS requirements to all type of PRIIPs as this might imply unnecessary implementation efforts or compliance risks.

<ESA\_QUESTION\_PKID\_46>

* : 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>

We would call for not extending UCITS requirements to all type of PRIIPs as this might imply unnecessary implementation efforts or compliance risks.

<ESA\_QUESTION\_PKID\_47>

* : 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>

We would call for not extending UCITS requirements to all type of PRIIPs as this might imply unnecessary implementation efforts or compliance risks.

<ESA\_QUESTION\_PKID\_48>

* : 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>

We would call for not extending UCITS requirements to all type of PRIIPs as this might imply unnecessary implementation efforts or compliance risks.

<ESA\_QUESTION\_PKID\_49>

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

<ESA\_QUESTION\_PKID\_50>

The proposal to provide complete information for the 4 most commonly selected options would be burdensome and complex to implement.

The assumptions to be used to identify the 4 most commonly selected options are not clear and in any case consumers’ preferences can change over time (e.g. based on market developments and new trends). This would require insurers to keep monitoring, expanding and updating the information provided, while exposing them to legal risks as in any case the assumptions used would be arbitrary.

Moreover, consumers might have the wrong perception that the 4 most commonly selected options are the most recommended, even if they are not the most suitable for his specific needs and objectives. In this respect, it is not clear how this requirement would match with the suitability test in IDD.

Also the proposal to link this new requirement to the POG provisions is not clear and would imply additional burdens (e.g. in terms of continuous updates) and legal risks (e.g. when a new product is set up it is not possible to predict which four funds will be the most commonly selected). We believe that if a product is considered to be appropriate for a certain target market when insures apply the POG provisions, then all the underlying options have been selected accordingly.

We would also like to note that the methodologies and conditions for the production of the complete information for the 4 most commonly selected options are not specified in the consultation paper.

In addition, we would welcome if the ESAs further clarified in Art. 14 of the RTS that PRIIP manufacturers may use the PRIIPs-KID provided by UCITS funds as specific information on the underlying investment option under Art. 10 (b) of the RTS after the expiry of the exemption of UCITS funds from the PRIIPs regulation.

<ESA\_QUESTION\_PKID\_50>

* : 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>

See answer to question 50.

<ESA\_QUESTION\_PKID\_51>

* : 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>

See answer to question 50.

<ESA\_QUESTION\_PKID\_52>

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

<ESA\_QUESTION\_PKID\_53>

According to the illustration provided by the ESAs in the consultation paper, the new presentation format could include more than 70 figures, which would overload consumers with information without improving their understanding.

Moreover, the risk class is not necessarily linked to different costs, so the split by risk class would not be an appropriate methodology, as it may imply a non-existent link to consumers.

<ESA\_QUESTION\_PKID\_53>

* : 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>

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

<ESA\_QUESTION\_PKID\_55>

We welcome the ESA’s acknowledgement that any changes to the PRIIPs KID will result in significant costs for PRIIPs manufacturers.

Such costs include:

* Cross-functional work to interpret the new requirements
* New data to be gathered
* Actuarial and financial calculations
* IT software changes
* Re-design of the PRIIPs KID template
* Tests of calculation and design
* Legal assessment of texts and figures
* Re-design of the PRIIPs KID template
* Potential translation into different languages
* New documents to be drafted and distributed to agents and customers
* Training for distributors
* Data exchange with funds on MOPs
* Update of the website, etc.

<ESA\_QUESTION\_PKID\_55>

* : 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>

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

<ESA\_QUESTION\_PKID\_57>

If the PRIIPs methodology is changed too often, consumers may lose trust in the information contained in the PRIIPs KID. We urge the ESAs not to introduce interim solutions and encourage the ESAs to conduct an in-depth review that is preceded by a consumer testing and thorough consultations with expert groups and stakeholders.

According to the PRIIPs Regulation, manufacturers must review the KID every year, in compliance with the already consolidated rules. This causes already an administrative burden and a high level of costs for providers. The introduction of subsequent new legal provisions and methodologies at EU level implies increases the administrative burden and compliance cost without having a proven improvement for customers.

Moreover, companies usually perform the periodic review of the KID every 12 months after the date of initial publication of the PRIIPs KID, so there can be a misalignment between the date of internal review and the date of application of the new requirements (with potentially 2 or more reviews in the same year).

<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)