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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 2019ESMA 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 | IITALIAN BANKING ASSOCIATION |
| Activity | Banking sector |
| Are you representing an association? |[x]
| Country/Region | ITALY |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_PKID\_1>

As an introduction to our answers, generally speaking, we believe important to highlight that the amendments to the PRIIPs KID must be carefully evaluated in order to:

* preserve as far as possible the approach implemented by the industry since 2018, which was at that time defined on the basis of a long and close discussion between the authorities and the representatives of the financial industry;
* ensure that the changes are really improving and, therefore, able to overcome the application problems actually encountered, safeguarding in any case the significance of the information provided to investors and the comparability between products.

In view of the above, some of the proposals in the consultation paper cannot in our view be considered (i.e. compensatory mechanism, simplified alternatives aimed at prescribing maximum growth rate determined by asset class, illustrative scenarios).

<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>

According to our experience, PRIIPs provisions do not limit the use of digital solutions for the KID.

<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>

According to our experience, we do not see merit for publishing the KID in a form that would allow for the information to be readily extracted using an IT tool since:

* it would not be relevant for retail investors: the KID needs to be read as a whole;
* for this, there are already existing platforms and templates for data exchange between manufacturers & distributors, such as the widely accepted EPT (“European PRIIPs Template”) format. Moreover it must be taken into account that: i) the narrative section (e.g. product description) cannot really be considered as a meta-data given the large diversity of possible structured payoffs;
* the granularity of information needed by intermediaries to comply with their obligations is higher than the one of the KID. As a matter of fact: i) the narrative section (e.g. product description) cannot really be considered as a meta-data, given the large diversity of possible structured payoffs; ii) the information data which intermediaries need to receive from manufacturers (asset managers and structured products manufactures) in order to properly understand the potential target market defined by manufacturers and to calculate accurately the aggregated ex-ante and ex-post costs and charges have been deeply analysed, jointly by manufacturers and distributors, within the European Working Group in order to develop a standardized flow of information, named European MiFID Template (EMT), for each financial instrument. The EMT provides three main different sections, respectively dedicated to target market, ex-ante and ex-post costs and charges.

Given the importance of ensuring the effectiveness of the EMT over time, the European Working Group has evolved into a new stronger and clearer governance structure, the Financial Data Exchange Group (“FinDatEx”), supported by the European Fund and Asset Management Association (EFAMA), the European Banking Federation (EBF), Insurance Europe (link), the European Savings and Retail Banking Group (ESBG), the European Association of Co-operative Banks (EACB) and the European Structured Investment Products Association (EUSIPA), which is near to finalize a new EMT version (V.3) which will be available from 1st January 2020.

<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>

We are very far from having a clear idea of the amendments which will be adopted and it will require a long time to reach this goal. Therefore it is not possible to assume the entry into force of the new regulations already during 2021 or at most from the beginning of 2022.

It should in fact be borne in mind that the industry needs at least 12/18 months, starting from the final approval of the new provisions.

In any case all products captured by PRIIPs (both UCITs and existing PRIIPs) should apply the revised RTS on the same application date on 1/1/2022 for the following reasons:

* investors are used to the current KID and will need time to adapt to the new one. Distributors will also need to be trained on the changes. We believe it will be easier to explain changes to parties if all products switch to the new version at the same time;
* for structured products, technically the KID generation set-up under the current RTS are very heavy IT workflows: manufacturers will need appropriate time to implement and test the required changes to adapt their set-up.

<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. A graduated approach should not be considered.

It would be confusing for retail clients and for distributors to have the KID format / content modified several times up to January 1st 2022. A graduated approach would require even more training and explanation at each step.

Considering technical implementation challenges (explained in Q55), a single application date for all the requirements is absolutely fundamental (e.g. it would not make sense to apply new cost tables with new IHP rules, while keeping the existing “RTS v1” rules for scenarios).

Furthermore, bearing in mind that all KIDs from 1/1/2022 should apply fully the new RTS, a graduated approach implies that manufacturer would need to anticipate/put in place a set-up allowing the reprocessing of the stock of PRIIPs created at each intermediate step, which is impossible to do.

<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>

In Annex IV, article 22, the rounding of 10 Euro does not appear to be adequate for many structured products where coupons have two decimals (for instance for a coupon of 3.15% per annum, we would need to round 10315€ to either 10320€ or 10310€). We believe it would be more precise to round the performance scenario to the nearest euro.

We reject the proposal of introducing the mentioned “this is the maximum/minimum you can get” in the scenarios. The dynamic text in the performance scenarios table in case of maximum return displayed is impossible to implement in a unified and consistent way for structured products since there is a variety of payoffs and features. In addition, when early redemption is possible (e.g. callable and autocallable products), it is unclear what is the maximum return (i.e. IRR/annualised return? Maximum absolute return?). We would recommend this part to be deleted, as it will open new implementation and harmonisation issues and potentially open the door to NCA gold-plating.

Moreover, a common approach for autocallable products should be defined as there is no common view in the market: in our opinion, scenarios in which the products are autocalled should be included in the final distribution.

PRIIPs Delegated Regulation should also be implemented with the wording adjustments prescribed by “Questions and answers (Q&A) on the PRIIPs Key Information Document (KID)”, released by ESAs on 19th July 2018, for OTC derivatives products (from page 27 to page 29). Also, these wording adjustments should be reviewed and improved, due to some current misalignment. In particular, at this regard, please note part “1. Templates – Table headings” where for the Prescribed language: “Investment” the specific adjustment requires the term “Nominal amount”, while in part “2. Table 1 “Costs over time” the text “investments” should be replaced with “notional amount”. Furthermore, the prescribed wording adjustments for OTC derivatives are currently available only in English language, while official translation in other languages used in Member States are needed to ensure the full comparability between products.

Lastly, we would like to underline that there is still a lack of clarity regarding the approach of the construction of the performance scenarios for Category 1 PRIIPS. The absence of a uniform standard may cause problems of comparability and difficulties for the implementation; therefore, we would like to invite the Authorities to define a reliable methodological standard.

<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>

We strongly reject the proposals to use “only illustrative scenario” for structured products (12.2) or a “combination of probabilistic and illustrative” (12.3). They raise significant issues:

* purely illustrative scenarios do not comply with Level 1 text of the EU Commission that indicates (recital 17) “*The key information document should be drawn up in a standardised format which allows retail investors to compare different PRIIPs”,* and (Article1) “*to understand and compare the key features and risks of the PRIIP”;*
* illustrative scenarios are impossible to implement and automate in a consistent and unified manner because of the diversity of structured products return profiles across EU countries;
* comparability is fully lost within category 3 as it is not probability based; every manufacturer can have different rules which leaves the door open to deviations or “misuse”;
* illustrative scenarios on their own hide information to investors such as potential dispersion of the product valuations, or low potential valuation in case of stress at intermediate holding periods;
* finally, the use of illustrative scenarios in the KID would require to “re-train” distributors & advisors, while the PRIIPs probabilistic scenarios are in place since 2018.

We believe that the most sensible proposal is to extend the application of the pay-off graph currently envisaged for regulated derivatives to all pure trading products (with recommended holding periods of 1 day) for which it makes no sense to do probabilistic scenarios.

<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>

We believe that intermediate scenarios should not be completely erased since they are useful to present to clients the effects of exit costs and specific features of some products (specifically with path dependent payoff, i.e autocallable).

As an alternative, the middle intermediate scenario could be deleted for products with RHP higher than 3 years while keeping the year intermediate scenario of all products with RHP longer than 1 year. The costs should remain linked to the moderate scenario and be represented both for the RHP and the IHP.

We believe at least one IHP has to be keptfor 3 main reasons. It is a compromise of limiting to one IHP (the 1y point), instead of 2 IHPs (1y and RHP/2) currently.

1) Fully principal protected long dated products are common in some markets (France, Belgium, UK), and investors need to be aware of dispersion of the product valuations at IHPs. It would be misleading to remove the IHP and hide the negative and stress valuations in the course of the life of a product. For example:
10 years EUR

100% Principal protected

Fixed Coupon = 1.25% year 1 to 5

Coupon = Max(0, CMS 30Y – CMS 2Y) year 6 to 10.

In a negative scenario, the investors could lose 17% of the investment if they exit prior to maturity (which occurs since most products are listed and liquid with a 1% bid-ask). It would be fundamentally wrong to hide such information. As illustrated in the example above, the potential loss after 1 year is usually the most significant one, and therefore, we recommend to leave this IHP.

2) IHP returns illustrate the real meaning of the RHP. For example, a typical RHP of equity funds is 5 years (market standard). The 1Y IHP visualizes to investors what it really means (i.e. short term volatility is higher than long term). The investors should see if they exit early after 1 year, then the annual return can be (for example) +40% (favourable) or -30% (unfavourable), while for 5 years the annual return could be +8% (favourable) or -6% (unfavourable). This is shown only in the IHP.

3) You needconsistency between the IHPs of the cost table and the IHPs of the scenarios because the ESA’s choice is to keep the Reduction in Yield in cost table, and show the full decomposition “IRR with costs” and “IRR without costs”.

4) Deleting all IHPs makes it more difficult to visualize the assumptions taken for autocallables (even if explanatory notes are added).

To increase comparability among KIDs, the ESAs could give more precise indications on a methodology to calculate the intermediate scenarios allowing to reach consistent results without full repricing.

<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>

We don’t believe that a stress scenario should be removed: it could be useful to show to the client what can happen to the product’s yield in particularly negative market scenarios.

Currently the main problem with the stress scenario is the different drift from other scenarios, allowing, in some cases, the stress scenario to be more favourable than the others. Aligning the drifts in both methodologies should remove the problem and give the desired result.

<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>

No.

As stated in EUSIPA’s reply from 18 June 2019, for equity, FX and rate linked structured products the Risk-free (T=RHP) should be set to the swap curve of the relevant currency, and not jurisdiction specific, because it is impossible to find a consistent classification for stocks and multi-country indices per jurisdiction.

For example a stock with revenues in multiple countries, dual listings: SX5E, the most widely used underlying in the EU SP market, has multi-country components and futures trading in multiple exchanges. The question of which sovereign curve to use (France, Germany, Netherlands, Italy, etc.) for that basic index would be a big issue.

Manufacturer should be allowed to use the risk-free swap curve (usually against 3-month Libor/floating rate) from a reasonable market source e.g. - either market prices used for internal pricing curves or Bloomberg / Reuters contributions, for instance: EUR - Bloomberg: YCSW0201 Index, Reuters: EURAB3EIRS=

The revised methodology shows a significant improvement compared to the current pro-cyclical one.

We would accept a split of risk premia per asset class, but reject a split per country, sector or rating. Neither country, sector or rating split is possible to implement in a unified way. Also it would be overly complex to explain such assumptions to retail investors.

<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>

The new methodology should be an improvement with respect to the current one since it should solve its procyclical tendency. A differentiation in the risk premium calculation for different asset classes would surely be beneficial. However the granularity of the risk premium should not be too deep to avoid confusion in the market implementation.

The risk premia set to 0 (for equity price return products) is fine to implement. The risk premia set to the div yield (for total return products) is complex to put in place for the following reasons:

* a country split for the dividends is impossible to implement in a unified way, for the same reasons it is impossible for the risk free rate: it is impossible to have a consistent classification of some assets (e.g. stocks, indices) per country.
* it opens the door to interpretation as to what should the yield be for structured products linked to mutual fund underlyings.

Therefore, we would consider a better alternative as fixed equity risk premium should be used, as per previous EUSIPA reply dated 18.06.2019

<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>

The choice of historical vs. projected dividends is of a secondary order, which should not have any substantial impact in scenarios, because the gap between the 2 levels is usually quite narrow. At present, we are aware of manufacturers using either historical or estimated future yield (from appropriate sources), and this does not lead to comparability issues.

Expected dividend yield should be determined according to an “appropriate source”: for instance, data providers, or internal marks of the manufacturer if the manufacturer is trading dividend futures or swaps. It should be the expected yield at the tenor of the PRIIPs (i.e. for an 8y PRIIPs, the 8y expected yield should be used, not the 1 year yield).

The draft RTS, except for the country based dividend, is correctly drafted and does not need further prescription:

*13.(b) (i) … estimated from an appropriate source if the dividend is received by the holder of the PRIIP.*

<ESA\_QUESTION\_PKID\_11>

* : How should share buyback rates be estimated?

<ESA\_QUESTION\_PKID\_12>

Buyback rates impose a serious challenge in terms of reliable and consistent data sources. The situation is even worse for equity indices. There are no common reliable data source for share buyback rate, and no one uses this concept in the structured product industry.

Our suggestion for a fixed ERP (see question 10 and 19) removes the need to estimate buybacks.

Therefore, we recommend that the reference to share buyback rate should be removed.

*13.(b) (i) Equity assets*

- *The risk premium shall be composed of:*

*“Share buyback rate if shares are expected to be bought back by the issuer.”*

<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>

This approach is not applicable to structured products.

<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>

No. For equities and other “spot assets” (FX spot, commodities spot), the 5 years period to estimate the volatility under the bootstrapping method is appropriate and has not led to problems in scenarios: it is well understood, it allows comparability.

Regarding the methodology for Category 2 money market funds, we cannot comment as this is not applicable to structured products.

<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 disagree with the proposed compensatory mechanisms which would be too arbitrary and reduce the comparability among similar 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>

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<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>

We disagree with the simplified alternatives aimed at prescribing maximum growth rate determined by asset class as they lead to unrepresentative results.

The simplified probabilistic methodology of prescribed maximum growth rate per asset class is:

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

It is paramount that the ESAs’ 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>

No, but we believe your proposal can be slightly amended by having two tables which prescribe the risk premia per asset class (where possible to calculate easily) :

* one for total return, and
* the other one for price return product, to take into account potential dividends received by the investor.

In addition, we should use a risk-free rate based on risk-free swap curves instead of a country specific one. This rate could be prescribed by an external public body.

This been would be similar to the recent EUSIPA’s proposal:
growth Equity = risk free (T=RHP) + equity risk premia, where;

- the risk-free rate is based on risk-free swap curves and not country specific

- the equity risk premia is prescribed by the ESAs (for instance using data of long term world equity index outperformance over a risk-free rate investment)

Example:

|  |  |  |
| --- | --- | --- |
| **Asset class** | **Risk premia (if no dividends received)** | **Risk premia(if dividends received)** |
| Equities | Fixed 0% (as per ESA proposal) | Fixed ~ 5.76% (and could be updated by ESAs or another public body) |
| Property | TBC | Dividend not applicable |
| Bonds | Coupon rates less the reference rate | Dividend not applicable |
| Cash | 0% | Dividend not applicable |
| Commodities | Expected forward rate less the reference risk free rate | Dividend not applicable |
| FX | Expected forward rate less the reference risk free rate | Dividend not applicable |

<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>

No. We believe it is paramount to keep only probabilistic scenarios in the KID both for Category 3 structured products and Category 2 (linear) products, for the reasons stated in our answer to question 6.

Also, the use of a probabilistic methodology should not be depending on short-term or long-term Category 3 products, it should apply to all.

<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>

Yes, proposal (c) on page 28 of the CP to use fixed risk premia for equities derived for instance from long term historical data, and can be slightly modified thanks to 2 tables as we suggested in question 19.

<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>

No. We believe the alternative approaches that you listed in the CP are a fair summary of possible growth rate methodologies.

<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 reject the “combination of probabilistic and illustrative” (CP 12.3) for the following reasons:

1- Displaying both illustrative and probabilistic scenarios would create confusion as it would overload clients with information in a document which is already quite long and somewhat difficult to understand.

2- It is already challenging to fit within the 3-page constraint for a significant range of structured products.

3- Purely illustrative scenarios do not comply with Level 1 text of the EU Commission that indicates: *The key information document should be drawn up in a standardised format which allows retail investors to compare different PRIIPs*

4- Illustrative scenarios would open the door to gold plating by NCAs across countries.

5- Illustrative scenarios are impossible to implement and automate because of the diversity of structured products return profiles across EU countries (e.g. single and multiple underlyings, cross asset classes… ).
To be relevant, the scenarios would need to be defined according to each product's features, which opens the door to inconsistencies across manufacturers.

6- Comparability is fully lost within category 3 as it’s not probability based, therefore everyone can have different rules, which leaves the door open to deviations or “misuse”.

(Two structured products using the same payout formulae but with different underlying assets may show the same "illustrative scenarios", although they could have very different probabilistic outputs).

7- Illustrative scenarios would not allow to properly illustrate the possible output of a range of structured products. A number of parameters impacting the valuation of a structured product during the course of its life are ignored (interest rates, volatility, dividends etc…).

Illustrative scenarios can even hide information to investors such as potential dispersion of the product valuations, or low potential valuation in case of stress.

8- Finally, the use of illustrative scenarios in the KID would require to “re-train” distributors & advisors, while the PRIIPs probabilistic scenarios are in place since 2018.

Also, the costs/benefit table (page 121) is not fairly assessed: The impossibility to implement and numerous disadvantages (not only the cost) outweigh by far any benefit.

<ESA\_QUESTION\_PKID\_23>

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

<ESA\_QUESTION\_PKID\_24>

Generally speaking we strongly disagree with the idea that illustrative scenarios should replace the probabilistic scenarios as it would:

* undermine the comparability of the information provided by the KID and would leave discretion to manufacturers to select the data to publish in the KID;
* make information for investors less meaningful and therefore less useful.

We believe that the most sensible proposal is to extend the application of the pay-off graph currently envisaged for regulated derivatives to all pure trading products (with recommended holding periods of 1 day) for which it makes no sense to do probabilistic scenarios.

No. We strongly reject the proposal to use “only illustrative scenario” for structured products (CP 12.2), for the same reasons stated in question 23.

<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>

No, we do not agree to use the existing definition of Category 3, nor an extended scope for products which would show illustrative scenario.

We also do not support illustrative (or probabilistic plus illustrative) scenarios at all, and for all current Category 3 products for these reasons:

* there are considerable drawbacks and challenges as explained above in questions 23 and 24;
* because the proposed RTS amendments in sections 12.2 and 12.3 of the CP refer to the creation of a new Annex VIII which is based on Article 36 of UCITS Regulation 583/2010. The UCITS Regulation is almost 10 years old, it does not meet the Level 1 objective of PRIIPs, such as Recital 17 and Article 1. It is not appropriate to rely on UCITS rules, neither on current Category 3, nor on an extended Category 3, because these rules are neither adapted, nor representative of the structured securities market**.**

<ESA\_QUESTION\_PKID\_25>

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

<ESA\_QUESTION\_PKID\_26>

In our opinion reporting the past performance in addition to the performance scenarios (especially if the historical drift can be corrected) risks creating confusion in the investor.

<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>

We believe that main problem related to the inclusion of past performance in the KID is not the maximum admitted length of the KID, but the difficulty for investors in combining past performances with future performance scenarios.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

Ideally, we would keep only the 1Y IHP in both Performance Scenarios and Costs tables.

However, comparing fixed term vs. RHP/2, we believe having a fixed term intermediate period would enhance comparability. With the current RTS, the RHP/2 IHP varies according to the product's RHP, and makes it difficult to compare products with different RHPs.

If we need to include a fixed IHP, to achieve this comparability, it is important to have a few clear criteria that determine IHPs. For example:

|  |  |
| --- | --- |
| RHP | Cost & Scenario table |
| RHP <= 1Y | displaying costs @RHP |
| 1y < RHP  | displaying costs @ 1Y, RHP |

In any case, the costs’ IHPs should be in line with the scenarios’ IHPs.

Due to the update requirement under PRIIPs, manufacturers have had to implement ways to adjust calculation and display (columns & labels) according to remaining time to maturity. Manufacturers would need to change the rules, but it seems to be technically feasible.

<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>

Our preference is for simplifying the table and keeping only a single IHP at 1y (applicable if RHP is above 1 year).

Yet, if the ESAs wish to keep 2 IHPs, then we do agree to the use of a 5y IHP for all products having an RHP of 8Y or more, provided that same rules of IHPs and RHP are used for the scenario. For the KID document to be understandable for investors, there must be a consistency between the IHPs of the cost table and the IHPs of the scenarios table.

<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 understand this relates to Table 2:
-(i) annual average in EUR = Total accumulated over RHP in EUR, divided by RHP

-(ii) would mean both the Total accumulated over RHP in EUR, and the annual average in EUR would be shown

We think **(i)** isrelevant, i.e. presenting in monetary terms an annual average cost figure asitiseasier to understand for investors.

Doing (**ii**) causes an overflow of information.

<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>

Indeed, the ESAs’ Option 1 Table 2 already contains the MIFID costs (entry, on-going, exit) in the column 2 “Description of cost”.

But we suggest for Option1 that the second column of Table 2 should say:

* for RHP >1year “Cost if you exit **at** 1 year” (and not “after 1 year”, which is not a clear it could mean 1y but can also mean later);
* for RHP <=1year “Cost if you exit at the recommended holding period”.



<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_38>

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

<ESA\_QUESTION\_PKID\_39>

In view of reaching a better coordination between the PRIIPs KID and MiFID II costs and charges disclosure requirements, we believe that it would be balanced requiring:

* only to manufacturers, to provide the information on the ex-ante impact of the total costs of each investment product on its return because they: i) have the obligation to test the product in order to comply with the product governance requirements and to develop the performance scenarios; ii) consequently have the possibility to correctly integrate the information on costs with the expected returns;
* to distributors, to provide the information on the impact of the total costs on the return of investments only in the ex-post periodic costs and charges disclosure.

We also agree that it is necessary to disclose the main assumptions upon which the RIY is based, to more clearly separate the RIY (impact on return figure) and the total monetary cost figures.

But we are not in favour of any of the proposed solutions since further analysis and insights are needed. Moreover, we believe that some mixed approaches could be considered, as different options proposed seem to have some advantages.

In particular, we:

* appreciate the explanation in Table 1 regarding the assumption of the costs on the moderate scenario and the gradual approach adopted to explain the RIY computation impact of costs on return over time, which is in all options;
* disagree with the different indicator in Table 2 for PRIPs and IBIPs in Option 1. In our view Table 2 of Option 1 should show for all PRIIPs simple numbers/monetary amounts and avoid the RIY which should therefore be limited to Table 1;
* believe that Table 2 of Option 3 is too complex;
* disagree with the avoidance of the separate breakdown of costs of Option 4;
* disagree with showing in Table 1 both for Option 2 and 4 Entry cost in EUR in several columns (1y, 5y and RHP) since it: i) looks like the entry cost can be paid several times; ii) also opens the door to different interpretations as to how this should be filled.

<ESA\_QUESTION\_PKID\_39>

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

<ESA\_QUESTION\_PKID\_40>

We therefore suggest to adopt:

* Table 1 of Option 1;
* Table 2 of Option or, alternatively, work more on Table 2 of Option 1 in order to show a homogeneous breakdown of costs for all PRIIPs without the adoption of RIY so that it is clear for investors and does not include too many numbers.

<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, we believe the proposed changes improve the current presentation helping investors to understand what the RIY is.

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 appreciate Table 1 of Option 1.

<ESA\_QUESTION\_PKID\_41>

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

<ESA\_QUESTION\_PKID\_42>

There must be consistency between the scenario and cost columns in terms of intermediate and recommended holding periods.

It should be allowed to use “*if you exit at the [recommended holding period]*” or *“if you exit at maturity*” as a label of the last column of Table 1 for fixed term products. This would avoid decimals issues as RHP is not always an integer number of years, and it varies according to the remaining time to maturity when KIDs are updated.

<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>

At the moment we are not able to provide input on this, but we believe that the proposal is interesting and that it deserves to be deepened.

<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 strongly disagree the coexistence of the UCITS KIID (provided to professional investors under the UCITS Directive) and the PRIIPs KID (provided to retail investors under the PRIIPs Regulation) since:

* it would be a negative outcome in terms of overall clarity and understandability of the EU disclosure requirements;
* it would result in unjustifiable costs for UCITS manufacturers;
* professional investors do not really need neither the KIID nor the KID.

<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>

UCITS investors are currently entitled to receive a UCITS KIID when changes are made to the savings plan. In the PRIIPs regime, it is mandatory to provide an updated PRIIPs KID to investors whenever the PRIIPs KID is updated. We would welcome the alignment of the UCITS KIID to the PRIIPs KID, by the implementation of Section II, Question 2a of the ESMA Q&A on UCITS in the PRIIPs Q&A. Investors would be provided with a KID at the beginning of the savings plan and whenever there are changes made to this savings plan, but a KID should not be required solely because the KID has been updated.

<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 do not think the UCITS Regulation 583/2010 Article 4 paragraphs 6 & 12 should be applied to other PRIIPs, because these are fund specific elements e.g. relating to name of the Management company, share classes, etc. All of these are not relevant to other PRIIPs.

<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>

No, we do not agree with the extension of ESMA34-43-392 Q&A on UCITS to other types of PRIIPs.

For structured securities, the Q&A 5 and 7, that the CP refers to, are not relevant:

* Question 5 relates to clear language, which is also a requirement under PRIIPs Level 1 and has already been addressed by manufacturers of PRIIPs KIDs.
* Question 7 relates to remuneration disclosure, which is only applicable to management company of UCITS or AIF /quote Q&A UCITS. This is only relevant for UCITS and AIF.
* Question 5a: Is it possible to signpost to a glossary?
* Answer 5a: Yes. However, as provided by the guide to clear language and layout for the Key Investor Information document (ref. CESR/10-1320), the use of a glossary should not result in too numerous cross-references.
* Question 5b: Is it possible to show the complete name of the fund when first mentioned and then simply refer it as “the Fund” after in the KIID.
* Answer 5b: Yes and the same approach can be taken for share classes of funds with a reference to “the share class of the fund” in the KIID.
* Question 7: Translation requirements in relation to the remuneration disclosure
* Question 7 [last update 12 October 2016]: Article 78(4), second sub-paragraph of the UCITS Directive requires the KIID to include a statement to the effect that the details of the up-to-date remuneration policy are available by means of a website and that a paper copy will be made available free of charge upon request. Does this mean that, in case of cross-border distribution of a UCITS, the information on the remuneration policy which has to be made available on a website (and the paper copy of it to be made available on request) needs to be translated into the same language as the one into which the KIID has to be translated?
* Answer 7: No. The information on the remuneration policy which has to be made available on a website (and the paper copy of it to be made available on request) should fall under Article 94(1)(c) of the UCITS Directive relating to information or documents other than the KIID. Therefore, this information should be translated, at the choice of the UCITS, into one of the following:
	+ the official language, or one of the official languages, of the UCITS host Member State,
	+ a language approved by the competent authorities of that Member State, or
	+ a language customary in the sphere of international finance /unquote Q&A UCITS/

<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>

The Articles 7, 9, 15, 16, 17, 18, 19, 20, and 21 of UCITS Regulation 583/2010, that the CP refers to, are only relevant to funds, but not to other PRIIPs.

<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_49>

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

<ESA\_QUESTION\_PKID\_50>

We agree with the proposal of the ESAs that seems useful not only for investors but also in order to support the correct distribution of these products by intermediaries.

However, we do not agree with the intention to remove the possibility to refer to the information document produced by the management company of the UCITS in case one underlying investment option is an external fund (UCITS). We understand that the proposal has been put forward since it is very likely that starting from 1 January 2022 UCITS products will fall in the scope of PRIIPs Regulation, and consequently will be subject to the obligation of producing PRIIPs KID. This said, it should be born in mind that for the manufacturer of the PRIIP it would be extremely burdensome to obtain the necessary data from the management company of the UCITs and process it in order to comply with the obligation to communicate precise information regarding external funds underlying the MOPs (Article 14 as proposed). Therefore we would like to suggest to maintain the possibility to make reference to the information document produced by the management company of the UCITs underlying the MOPs, even in case that this information document become the KID PRIIPS starting from the end of UCITS exemption.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_52>

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

<ESA\_QUESTION\_PKID\_53>

We agree with the proposal of the ESAs that seems useful not only for investors but also in order to support the correct distribution of these products by intermediaries.

<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>

Yes. Some costs and drawbacks have not been fully assessed.

The Primary problems or blocking points of the proposal are below

* **Annex VIII:** **illustrative scenario** (12.2) or **illustrative + probabilistic** (12.3) for all Category 3, while only Category 2 gets the probabilistic treatment is an unacceptable non-level playing field, and also raise question of compliance with Level 1. The cost and the mere impossibility to implement this for structured securities have not been accurately presented, and they far outweigh any benefit. As explained above, some of the drawbacks have been omitted too (such as the fact that such illustrative scenarios would not allow to properly show the possible negative output or early exit risks, that they are open to mis-use, and that there is no consistent way to implement them for the same product across different manufacturers).
* **Growth rates based on country specific risk-free rate:** the cost and complexity of implementation is omitted: It is impossible to implement consistently between manufacturers of the same product (e.g. which risk-free rate to use for multi country equity indices, underlying stocks with dual country listing GB/NL, or EU/US, CLNs with equity upside, … ).
* **The dynamic text in the performance scenarios table in case of maximum return displayed** is impossible to implement in a consistent and unified way for structured products since there is a variety of payoffs and features. In addition, when early redemption is possible (e.g. callable and autocallable products), it is unclear what is the maximum return (i.e. IRR/annualised return, or absolute return)
*4. Where one of the performance scenarios shows the minimum or maximum investment return, the column ‘estimated chance this scenario occurs’ shall no longer include the estimated chance but should instead state either ‘This is the minimum you can get’ or “This is the maximum you can get’.*
* **Removing all IHPs in Performance Scenarios and the Stress Scenario** will lead to hiding a potentially low valuation in case of an early exit in long dated products and inconsistencies with Cost tables. This harms investor protection.

Second order problems

* **Removal of Stress Scenario** **is a major problem for low barriers products** where the 10% worse case shows 100% principal returned, while actually the product is principal at risk and would have a very low stress scenario. This is not protecting the investor well.
* The ESAs’ proposal to display the minimum scenario (i.e. 0 EUR) in this case is a possible alternative, but it loses comparability and hides the differences between various barrier levels, and also disregards the impact of the volatility of the underlying, which is the second most important risk factor (after spot move) of a structured equity product.
* **The equity risk premium set to 0 (price return) or to the div yield (total return)**: this is not ideal, we would consider an alternative of a fixed equity risk premium for the reasons explained in the August 2019 study. Yet, we can live and implement the assumption of 0 risk premia on price return products easily.

<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>

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<ESA\_QUESTION\_PKID\_56>

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

<ESA\_QUESTION\_PKID\_57>

Yes. A gradual implementation of the revised RTS will multiply the costs of adaptation at each step due to multiple releases required in IT systems, and the complexity of re-training distributors at each step/release.

We support a single application date on 1/1/2022 for all PRIIPs, which is less costly, and clearer for investors.

<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)