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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 | Spanish Association of Insurers (UNESPA) |
| Activity | Insurance and Pension |
| Are you representing an association? |  |
| Country/Region | Spain |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_PKID\_1>

The PRIIPs KID is intended to apply the same disclosure standards to a wide variety of products. However, in practice, it applies mainly to insurance products in Spain for the time being, as UCITS funds are still excluded from the scope of the PRIIPs Regulation.

After an analysis of the proposals included in the consultation paper, UNESPA does not believe that the proposed changes will improve the quality of information in the PRIIPs KID, since they will increase the complexity of the methods and presentation of information, making it more difficult to understand.

UNESPA has serious concerns with the “quick-fix” approach taken in the current European supervisory authorities’ (ESAs) public consultation. It is vital that any new measures address the underlying problems with the PRIIPs KID. It also needs to be evidenced that the consumer will benefit from these regulatory changes, in order to justify the significant systems changes and compliance costs for the insurance industry. 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 all IBIPs.

Therefore, UNESPA requests that the fundamental changes required to address flaws in the PRIIPs KID are only considered as part of the official overall review foreseen by the Level 1 PRIIPs Regulation. Such amendments require thorough impact assessment and proper, holistic consumer testing of all aspects of the KID, to ensure that consumers are provided with meaningful information. For this reason, UNESPA calls for one single set of changes at the time of the official review (level 1 & level 2).

UNESPA would also like to highlight the great diversity of the insurance markets and insurance products (guaranteed products at maturity, discretionary with-profits, non-discretionary with-profits, structured Unit-Linked, non-structured Unit-Linked, hybrids, etc.) across Europe. The success of any amendment to the PRIIPs regulation requires to duly take into account this diversity, without excluding adaptations when required by products specificities.

A one-size-fits-all approach cannot lead to inappropriate representation of the nature and characteristics of certain products. The objective of improving comparability among products can never come at a cost of making it more difficult the understanding and comprehension of some of these products, such as guaranteed products at maturity and immediate life-long annuities.

One of the main problematics with the PRIIPs KID in the Spanish insurance market is that the PRIIPs KID is not well adapted to the specific characteristics of immediate life-long annuities, which represent 50% of the life insurance market. Therefore, immediate life-long annuities should be out of the scope of PRIIPs, or a specific KIDs should be produced for this kind of product (as it is the case of futures, call options and put options for which a different presentation of performance scenarios is allowed).

The proposals included in the consultation paper will not mean any step forward in solving these problematics.

<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>

The PRIIPs Regulation obliges insurers to provide pre-contractual information on paper, as a default requirement. It may only be provided in another medium “by way of derogation” or exception from this paper requirement. This requirement inhibits digitalisation and prevents further development of the internet as a distribution channel. It fails to recognise increasing consumer demand for, and use of, online services and is not conducive to ensuring future-proof regulation. Several requirements on the form and content of the PRIIPs KID including on front-size and pages length are inherently paper based and will need to be revised to allow for the use of digital distribution channels.

In contrast, the PEPP Regulation takes a more digital-friendly approach. It rightly allows for the electronic distribution of PEPP information from the outset, while still permitting consumers to request this information on another durable medium, such as paper.

However, without the necessary changes on Level 1 Regulation, this issue cannot be solved on Level 2 alone. As to other approaches to the use of digital solutions for the PRIIPs KID, any new proposal should be properly tested with consumers. Therefore, UNESPA believes that:

* More time is needed to assess, test and define possible new approaches as part of the review foreseen in the PRIIPs Level 1 Regulation.
* Given the multiple implications on consumers and product manufacturers, any change should not be rushed nor introduced in different batches.

<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>

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<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>

UNESPA calls for one single set of changes ideally at the time of the official review foreseen by the Level 1 Regulation and following a holistic consumer testing of all the different contents.

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 at least 12 months from the publication of the targeted changes in the Official Journal or/and at the earliest January 2022 to the extent that UCITS are included definitely into the PRIIPs scope and that the current temporary exemption is not extended.

<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.

To avoid further consumer confusion, loss of trust and unnecessary compliance costs, interim solutions and continual changes must be avoided.

<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>

UNESPA would like to highlight the great diversity of the insurance markets and insurance products (guaranteed products at maturity, discretionary with-profits, non-discretionary with-profits, structured Unit-Linked, non-structured Unit-Linked, hybrids, etc.) across Europe. The success of any amendment to the PRIIPs regulation requires to duly take into account this diversity, without excluding adaptations when required by products specificities.

A one-size-fits-all approach cannot lead to inappropriate representation of the nature and characteristics of certain products. The objective of improving comparability among products can never come at a cost of making it more difficult the understanding and comprehension of some of these products, , such as guaranteed products at maturity and immediate life-long annuities.

One of the main problematics with the PRIIPs KID in the Spanish insurance market is that the PRIIPs KID is not well adapted to the specific characteristics of immediate life-long annuities, which represent 50% of the life insurance market. Therefore, immediate life-long annuities should be out of the scope of PRIIPs, or a specific KIDs should be produced for this kind of product (as it is the case of futures, call options and put options for which a different presentation of performance scenarios is allowed).

The main traditional life insurance products providing long term fixed interest rate guarantees at maturity in Spain are:

* Immediatelife annuities that only include longevity guarantees: Life insurance contracts generally taken out to cover pension commitments assumed by employers.
* Immediate life annuities that also include mortality guarantees: Reality shows that individual customers in Spain are more interested in contracting immediate life annuities which include mortality guarantees rather than life annuities without mortality guarantees. In case of an early death of the insured person, the beneficiaries receive a percentage of the premium paid (for example, 105%, 95%, 90%, 85%... of the premium paid).

In all cases, the insurance contract provides a contractual surrender value capped by the market value of the assigned portfolio of assets (fixed income bonds) at the moment the policyholder surrenders. This means all these products are therefore considered into the scope of PRIIPs.

The surrender rate of immediate life annuities is very low (1-3%). The majority of clients keep the product until the moment they die.

The PRIIPs KID does not reflect the nature of guaranteed product at the end of the RHP because all survival scenarios must reflect the amount that would be received by the client in case of surrender at a specific moment (e.g. RHP: 21 years), even if experience demonstrates that the surrender rate of these products is very low (1-3%). The templates for the presentation of the performance scenarios require insurance undertakings to use a concrete number for the RHP. This can be confusing for clients who are contracting life-long annuities and expect to receive an annuity until the moment they die, regardless of how long that is. In the case of life-long annuities, the end of the recommended holding period should be presented as the word ‘life-long’ instead of a specific number.

The performance scenarios do not reflect the important role played by the biometric component in the performance of immediate life annuities without mortality guarantees. The performance of an immediate life annuity without mortality guarantees is determined not only by the financial performance of the product (e.g guaranteed interest rate net of all applicable cost) but also by the biometric performance of the product. If a retail investor contracts an immediate life annuity without mortality guarantees at retirement age that guarantees a life-long income, but only lives for 3 years, he/she will make a loss. If the retail investor lives much longer, he/she will make a gain, on the basis of not only the guaranteed interest rate but also by the additional biometric performance. The total performance of this kind of immediate life-long annuity without mortality guarantees, both in terms of percentages and absolute values, is very difficult to reflect in the PRIIPs KID because the product is a protection product instead of an investment product.

The current presentation of performance is also inappropriate for immediate life-long annuities with mortality guarantees. For this kind of life-long annuity, the PRIIPs KID does not reflect the nature of guaranteed product at the end of the RHP period (the moment in which the policyholder dies) because all survival scenarios must reflect the amount that would be received by the client in case of surrender at a specific moment (e.g. RHP 21 years), even if experience demonstrates that the surrender rate of these products is very low (1-3%). The total performance of these annuities is also very difficult to reflect in the performance scenarios, because it is determined not only by the amount received by the retail investor in case of surrender or by his/her beneficiaries in case of death, but also by the annuity payments received by the retail investor until the moment he/she surrenders or dies. The accrued income will have already been paid to the insured at the time of their death, whereas the surrender value (mortality guarantee) is what the insured’s beneficiaries can hope to receive. It is not possible to group in the death scenario the accrued annuity monthly income with the amount payable under the mortality guarantee.

The proposals included in the consultation paper will not mean any step forward in solving these problematics.

<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>

UNESPA agrees in the ESA´s proposal consisting in eliminating intermediate time periods for any category of PRIIPs in the performance scenarios table. This would ensure more coherence within the overall PRIIPs KID, as the risk indicator is also based on the expected total duration of the investment.

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). In any case, consumers are informed about options and impacts of early redemption in the “How long should I hold it and can I take money out early” section of the PRIIPs KID.

UNESPA agrees in the ESA´s proposal consisting in eliminating the stress scenario in the performance scenarios table.

UNESPA also agrees in the ESA´s proposal consisting in including a row on the “minimum guaranteed return”, as proposed in the performance scenarios table at page 67 of the consultation paper. This would be meaningful information for consumers, and would help them understand the benefits of products that offer a guarantee and to distinguish those products that offer a guarantee from other that don´t offer any guarantee.

The dividend yield methodology that is proposed in the consultation paper is considerably more complex than the current one and is not straightforward to implement for all PRIIPs. Additionally, it is not clear whether or not guaranteed products at maturity and immediate life-long annuities that fall in category 3 will be affected by this methodology.

As stated at page 26 of the consultation paper, the “ESAs also acknowledge that such a methodology is relatively complex and may present challenges, both in terms of implementation by the industry, and explanation to consumers.”

As to the appropriateness of the results obtained through the new methodology for non-structured Unit-Linked products, UNESPA does not see the benefit in providing consumers with averaged figures with no concrete and proof-based evidence about the level of robustness of such figures.

In this respect, UNESPA is concerned that “it has not been possible to test the approach on the full range of different types of PRIIPs” (page 17) and that “without comprehensive testing of all product types in all possible market conditions, [the ESAs] cannot conclude definitively that issues will not arise with the proposed methodology” (page 25). There is no solid evidence that the new methodology provides solid and meaningful results for all the different products.

UNESPA believes that more time is needed to properly develop and test new methodologies and their underlying assumptions, and assess all possible options for the calculation of the performance scenarios.

With regard to illustrative scenarios, it would be inconsistent to apply them only to non-IBIPs structured products as the ESAs are proposing: customers looking to compare a non-IBIP structured product with an IBIP structured product would not be able to do so.

Besides, the text is not clear as illustrative scenarios are proposed only for non-IBIPs structured products at page 30 but then this is not specified in the proposed amendments at page 70-71 in which illustrative scenarios are applied to all category 3 PRIIPs, including category 3 IBIPs.

Furthermore, UNESPA does not understand the merit of showing both, probabilistic and illustrative scenarios. Consumers will not only be overloaded with too many scenarios but also confused about their respective informative value.

It is also not clear how guaranteed products at maturity and immediate life-long annuities, which are also category 3 PRIIPs, would be treated and how this approach would apply to this kind of products. These kind of products represent 90% of the IBIPs sold in Spain (both lump sum and annuities) and are included into the scope of PRIIPs because the insurance contract provides a contractual surrender value capped by the market value of the assigned portfolio of assets (fixed income bonds) at the moment the policyholder surrenders.

<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>

See answer to Q6.

<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>

See answer to Q6.

<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>

The details of this methodology are not clear and need to be clarified. UNESPA believes that more time is needed to properly assess, develop and test with consumers any change to the performance scenario methodology and their underlying assumptions, and assess all possible options including for example illustrative scenarios.

As to the overall dividend yield methodology that is proposed in the consultation paper, this approach is considerably more complex than the current one and is not straightforward to implement for all PRIIPs.

The availability and the access to the data that are necessary to implement the new methodology also represent a significant burden that should not be underestimated. There is little competition on the market as the number of data providers is extremely limited, as well as their geographic diversification. Product manufacturers, especially smaller entities, may not have the access and the right to process all necessary data, even if they already have a subscription with a data provider for other internal purposes. Thus, they would be confronted with additional costs, in a market that is highly dominated by few providers where conditions can be very unfavourable to the end users.

Besides, with respect to the appropriateness of the results obtained through the new methodology, UNESPA does not see the benefit in providing consumers with “more moderate” figures with no concrete evidence about the level of correctness of such figures.

Additional comments on the shortcomings of the new approach can be found in the response to Q10.

<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 dividend yield methodology as proposed in the consultation paper is considerably more complex than the current one and is not straightforward to implement for all PRIIPs. As stated on page 26 of the consultation paper, the “ESAs also acknowledge that such a methodology is relatively complex and may present challenges, both in terms of implementation by the industry, and explanation to consumers”. UNESPA does not believe that the ESAs provide enough evidence that this more complex methodology necessarily brings more realistic results.

As to the specific elements of the new methodology, the dividend yield might not be the best basis to project the return of a product, especially for category 3 insurance IBIPs (e.g. guaranteed products at maturity; immediate fixed life-long annuities).

As to the appropriateness of the results obtained through the new methodology, UNESPA does not see the benefit in providing consumers with “more moderate” figures with no concrete and proof-based evidence about the level of correctness of such figures.

In this respect, UNESPA is concerned that “it has not been possible to test the approach on the full range of different types of PRIIPs” (page 17) and that “without comprehensive testing of all product types in all possible market conditions, [the ESAs] cannot conclude definitively that issues will not arise with the proposed methodology” (page 25). There is no solid evidence that the new methodology provides correct and meaningful results for all the different products that are included in the wide scope of the Regulation.

Unfortunately, it is not possible to perform such testing at market level as many details are still missing in the consultation paper. Indeed, the ESAs proposals are not fully clear nor comprehensive. For example:

* How should guaranteed products at maturity and immediate life-long annuities that fall in category 3 be treated?
* Which reference rates should be used (e.g. historical or forward looking)? From which source?
* Illustrative scenarios are proposed as an alternative approach only for non-IBIPs structured products on page 30 of the consultation paper, but this is not specified in the proposed amendments at pages 70-71 in which illustrative scenarios are applied to all category 3 PRIIPs, including category 3 IBIPs. How should this be interpreted? And why are inconsistent approaches permitted?

It would be imperative that a more detailed and comprehensively drafted proposal is provided for consultation on such technical contents. Issuing Level 3 clarifications after the introduction of changes to the Level 2 would not be a solution, as it would create legal uncertainty and challenge the implementation of the new requirements by product manufacturers within the prescribed time limits.

UNESPA believes that more time is needed to properly develop and test new methodologies and their underlying assumptions and assess all possible options including, for example, illustrative scenarios.

The introduction of interim changes that are not properly defined nor fully tested is not beneficial for consumers and will create legal risks for product manufacturers.

<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>

See answer to Q10.

<ESA\_QUESTION\_PKID\_11>

* : How should share buyback rates be estimated?

<ESA\_QUESTION\_PKID\_12>

See answer to Q10.

<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>

See answer to Q10.

<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>

See answer to Q10.

<ESA\_QUESTION\_PKID\_14>

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

<ESA\_QUESTION\_PKID\_15>

The reference to possible compensatory mechanisms and additional caps shows that the new methodology as it is does not provide sufficient safeguards and that more time is needed to properly develop and test a new approach to performance scenarios.

A number of the mechanisms proposed are not coherent with the overall new methodology: the dividend yield methodology is designed to avoid historical data but would then be complemented by a safeguard mechanism that relies on historical data. This inconsistency is concerning.

<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>

Although the Cornish Fisher and bootstrap models are not wholly appropriate for projecting the PRIIPs performance scenarios, these models are at least self-consistent and produce traceable results. An artificial replacement of the drift undermines the self-consistency of these models. If further safeguards were implemented, they would additionally distort the models.

Besides, based on the public consultation paper, it is not clear which compensatory mechanism should be used and how. Furthermore, it is not possible to ensure that the information in the KID would remain comparable for all products if product manufacturers were able to choose among different compensatory mechanisms options or apply them in different ways.

UNESPA believes that more time is needed to properly develop and test any change to the performance scenarios methodology and their underlying assumptions, and assess all possible options including for example illustrative scenarios.

<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>

See answer to Q15.

<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>

Based on the information provided in the consultation paper, we do not have sufficient details of the method to be able to comment on this proposal.

UNESPA believes that more time is needed to properly develop and test any change to the performance scenarios methodology and their underlying assumptions, and assess all possible options like for example illustrative scenarios.

<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>

Based on the information provided in the consultation paper, we do not have sufficient details of the method to be able to comment on this proposal.

UNESPA believes that more time is needed to properly develop and test any change to the performance scenarios methodology and their underlying assumptions, and assess all possible options like for example illustrative scenarios.

<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>

Based on the information provided in the consultation paper, we do not have sufficient details of the method to be able to comment on this proposal.

UNESPA believes that more time is needed to properly develop and test any change to the performance scenarios methodology and their underlying assumptions, and assess all possible options like for example illustrative scenarios.

<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>

UNESPA is not in the position to provide an answer, as the consultation paper does not contain sufficient details on these alternative approaches.

<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>

See answer to Q21.

<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>

The consultation paper is not clear as illustrative scenarios are proposed only for non-IBIPs structured products on page 30, but then this is not specified in the proposed amendments at pages 70-71 in which illustrative scenarios are applied to all category 3 PRIIPs, including category 3 IBIPs.

It is also not clear how guaranteed products at maturity and immediate life-long annuities that fall in category 3 would be treated and how this approach would apply to this kind of products.

Furthermore, we do not understand the merit of showing both, probabilistic and illustrative scenarios. These scenarios are based on completely different ideas and consumers will not understand how they relate to each other (or rather do not relate). Consumers will not only be overloaded with too many scenarios but also confused about their respective informative value.

<ESA\_QUESTION\_PKID\_23>

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

<ESA\_QUESTION\_PKID\_24>

See answer to Q23.

<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>

The consultation paper is not clear as illustrative scenarios are proposed only for non-IBIPs structured products on page 30, but then this is not specified in the proposed amendments at pages 70-71 in which illustrative scenarios are applied to all category 3 PRIIPs, including category 3 IBIPs (guaranteed products at maturity, annuities and structured Unit-Linked products fall into this category).

It is also not clear how guaranteed products at maturity and immediate life-long annuities that fall in category 3 would be treated and how this approach would apply to this kind of products.

<ESA\_QUESTION\_PKID\_25>

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

<ESA\_QUESTION\_PKID\_26>

The combination of two different methodologies on performance (future performance + past performance) in the same KID should be avoided in order to not confuse consumers.

As noted by the ESAs, it is also not clear how this will fit with the requirement that PRIIPs KIDs do not exceed 3 pages in length. In practice, it would make it even more challenging, and at times impossible, to include all the required information within the 3-pages mandatory limit imposed by the Level 1 Regulation in a readable font, in particular for insurers who already have to include more information than other providers (e.g. insurance benefits and covers, insurance scenarios like the death scenario).

In general, simply adding information is not a solution.

In any case, it makes no sense including information on past performance in the KID for non-linear category 3 IBIPs such us guaranteed products at maturity (without profits), immediate fixed life-long annuities and structured Unit-Linked products.

The performance of products which offer a guarantee at maturity is driven by the promised future guarantee. Therefore, including information of past performance for these products is meaningless and could be misleadingfor consumers(e.g. in Spain, a 3% interest rate guarantee was usual 5 years ago [past performance] but now it´s only possible to offer a 0,20% guarantee).

<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>

See answer to Q26.

<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>

UNESPA believes that average past performance has even less informative value for consumers. For example, it is possible that a product that has fluctuated severely over the last 10 years shows relatively stable average past performance. In this case, consumers would receive a wrong impression about the volatility of the product.

<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>

See answer to Q26.

<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>

See answer to Q26.

<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>

See answer to Q26.

<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>

UNESPA does not see any benefit in including intermediate time periods for presenting costs. We commend the ESA’s efforts to introduce much needed simplicity by removing the intermediate time periods from the section on performance. This simplicity should also be reflected in the costs section to ensure coherence across the KID (including in relation to the risk indicator).

The structure and the long-term nature of IBIPs makes it inappropriate to present costs after one year, 5 years or at any other fixed time period. An estimation of costs early in the lifetime of a product will never allow for a meaningful comparison between products with a different recommended holding period as it captures the costs at a different point in the evolution of the product in relation to the RHP. The only useful point of comparison are the costs at the RHP.

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 or penalties incurred for divestments prior to maturity of the product.

Notwithstanding the above, if it is deemed necessary to include an intermediate period for costs, we believe that displaying costs at half RHP is more meaningful than a fixed duration. This allows for a degree of consistency within the information provided for a product. We do not believe it is possible to define a fixed duration that is meaningful for all products in scope of PRIIPs.

<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 Q33.

<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>

UNESPA supports the use of annual cost figures. In terms of comparability of products, this is the most useful figure as the annual average cost allows for a degree of comparison between products with different RHPs. Introducing an additional disclosure on the accumulated costs does not allow for a level playing field between products, as costs will appear higher for longer term products.

Introducing additional figures on the total accumulated costs would also add unnecessary complexity to the PRIIPs KID with no additional benefit for consumers.

<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>

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<ESA\_QUESTION\_PKID\_36>

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

<ESA\_QUESTION\_PKID\_37>

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<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>

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<ESA\_QUESTION\_PKID\_38>

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

<ESA\_QUESTION\_PKID\_39>

UNESPA does not see the need to introduce substantive changes to the presentation of costs in the PRIIPs KID within this interim review. UNESPA strongly believes that RIY is a robust and meaningful indicator applicable to all PRIIPs. RIY is a robust, realistic and accurate cost indicator because 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 equally well for single and regular premium payments. These properties are particularly important to properly represent long term products and products with ongoing premiums.

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.

<ESA\_QUESTION\_PKID\_39>

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

<ESA\_QUESTION\_PKID\_40>

All other options proposed by the ESAs introduce added complexity without adding any value for consumers.

<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>

UNESPA agrees that the ESAs’ proposal would enhance consumer understanding. The presentation of RIY together with the yield before and after the costs will make clearer that costs are related to performance (cost-performance ratio). We believe that this presentation will create clear integration of performance into the presentation of costs and that this is beneficial to consumers. Coupled with the introduction of narrative explanations that are suited to IBIPs this could potentially significantly improve the comprehensibility of RIY.

<ESA\_QUESTION\_PKID\_41>

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

<ESA\_QUESTION\_PKID\_42>

While there may be some merit in enhanced presentation of the RIY figures, UNESPA would strongly suggest that any changes to the presentation of costs are subject to consumer testing before any alterations are made to the current KID. UNESPA believes that this testing should take place in the context of the whole KID document, where the consumer already receives information on the overall features of the product. This would enable the ESAs to fully assess the potential impact of the proposed changes on consumers in a context that better reflects a real-life sales environment, including measuring the impact of potential information overload on consumer understanding. The current proposals are a significant change from the existing KID and it is vital that they are only introduced if there is a solid evidence base that they improve consumer understanding.

In addition, some of the proposed changes, including the introduction of additional narratives on how costs are calculated, would lengthen the PRIIPs KID and make it even more challenging to include all the required information within the 3-pages mandatory limit imposed by the Level 1 PRIIPs Regulation in a readable font.

<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>

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<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>

UNESPA agrees that the use of the UCITS KII alongside the PRIIPs KID would potentially be confusing as it would result in two information documents being available for the same product, with significant differences between the information included within them.

That said, where the intended end investor of an insurance product is a retail investor, insurers are required to produce a PRIIPs KID and rely on the information provided by UCITS managers to do so. Without a requirement for UCITS managers to provide a either KII or a PRIIPs KID to the insurer, there is no legal requirement that insurers can rely on to ensure they have access to the data they need.

It is vital that a requirement to provide an information document to the professional investor where the intended end customer is a retail investor is maintained.

We also note a potential issue with the timeline for any changes to the current framework. We understand that the current proposals are intended to be implemented prior to the end of the UCITS exemption. If this is the case, it is crucial that any changes related to the UCITS KII are postponed until the end of the UCITS exemption to avoid any gaps between the old and new regime.

<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>

UNESPA believes that the PRIIPs framework was drafted with a view to including UCITS in the scope and therefore changes to accommodate them should be minimal. It is not necessary to carry over all additional disclosure requirements simply because they are not identical to those included in PRIIPs. Instead, UCITS requirements and guidance should only be introduced to PRIIPs where absolutely necessary and should be applicable to as few providers as possible. Furthermore, the inclusion of UCITS in the PRIIPs framework should not result in additional requirements for other PRIIPs manufacturers.

At this stage we are not able to provide more detailed comments on the specific proposals as insufficient detail is provided in the consultation paper regarding the substance of the requirements to be carried over from UCITS and their legal form under the PRIIPs framework.

<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>

See answer to Q46.

<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>

See answer to Q46.

<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>

See answer to Q46.

<ESA\_QUESTION\_PKID\_49>

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

<ESA\_QUESTION\_PKID\_50>

UNESPA believes that the ESAs’ proposal to provide more complete or “total” information for at least the four most commonly selected MOPs options would overload consumers with information and simply confuse them. The proposal would at the same time be burdensome and complex to implement.

As to the impact on consumers:

* If consumers are presented with the most commonly selected options, there is an obvious risk of confusing them. Consumers would perceive those options as a recommendation, even if those options are not the most suitable to their specific needs and objectives based on the suitability test and the advice consumers may receive under IDD. In this respect, it is not clear how to avoid conflicts between the requirement to provide more complete or “total” information on most commonly selected MOPs options and the suitability test provisions under IDD.
* The proposal has not been tested on consumers, so there is not a solid basis to argue that adding information on MOPs could effectively help consumers’ understanding.

As to the complexity of the implementation:

* The proposal is not easy to understand and the assumptions to be used to identify the most commonly selected options are not clear. The most commonly selected options may vary from distribution channel to distribution channel, depending on consumers’ profiles and based on the evolution of the market (e.g. shifts in consumers’ preferences, economic cycles and new trends).
* In any case, the assumptions used to identify the most commonly selected options would be arbitrary and product manufacturers would be exposed to legal uncertainty and liability risks in case of Authorities’ controls or consumers’ litigations. The identification of the most commonly selected options and the production of adequate complete information pose significant compliance risks in relation to Article 6.1 of the Level 1 Regulation (the PRIIPs KID “shall be accurate, fair, clear and not misleading”).

From a distribution and product offering point of view, the new requirement could have the unintended negative consequence of creating a “nudging” effect: the most commonly selected options might artificially become the most frequently selected by consumers or the most easily recommended by distributors – just because they are described in new, readily available standard documents that are perceived as “default” investment solutions. Such distortion in the market could have pro-cyclical effects, reduce the number and types of options available in the market and ultimately inhibit the possibility to adapt the MOP to the different demands and needs of different consumers.

<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 Q50.

<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 Q50.

<ESA\_QUESTION\_PKID\_52>

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

<ESA\_QUESTION\_PKID\_53>

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<ESA\_QUESTION\_PKID\_53>

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

<ESA\_QUESTION\_PKID\_54>

UNESPA believes that more time is needed to assess, develop and test with consumers appropriate solutions for MOPs.

<ESA\_QUESTION\_PKID\_54>

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

<ESA\_QUESTION\_PKID\_55>

UNESPA welcomes the ESAs acknowledgement that any changes to the PRIIPs KID will result in significant costs for PRIIPs manufacturers. The changes would mean much more than the mere “update of IT systems or tools used”.

Indeed, the costs of implementation 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
* Test of calculations and design
* Legal assessment of the texts and numbers
* Potential translation into different languages
* Drafting of new documents and distribution to agents and customers
* New training for distributors, including training to explain the new requirements and changes compared to documents already distributed under previous applicable texts
* 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>

The introduction of the new dividend yield methodology and of past performances in the PRIIPs KID would have severe implications in terms of costs, as it would require to implement a new approach - that is more complex than the current one, as explained in Q10.

Also in light of this, changes to the performance scenarios should be considered only in the framework of the review foreseen in the Level 1 Regulation and not as interim changes.

Insurers would also need to address the impacts on other KID elements which would also imply high costs.

<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 any interim solutions and encourage the ESAs to conduct an in-depth review at a later stage that is preceded by consumer testing and thorough consultations with expert groups and stakeholders.

<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)