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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 Banking Association |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Spain |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_PKID\_1>

TYPE YOUR TEXT HERE

<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>

Following the initiatives on social responsibility, we consider that it would be a good time to introduce initiatives intended for reducing paper consumption. We therefore believe that the option for the investor to receive the KID on paper as a default option should be removed.

It could be argued that the Regulation requires a retail client to consent to receiving the KID by email or any durable medium. For most clients, email or other durable mediums are the primary medium for regular communication, something understandable in the 21st century and aligned with the sustainability objectives of the European Union). We propose therefore that specific consent for the delivery of the KID by email should not be a requirement, provided that the requirements relating to “*durable medium*” pursuant to MIFID are complied with. As an alternative, it could be formally validated through a Q&A or any similar document that clients have consent the delivery of the KID by email if they do not specifically request it in paper once received by email.

In that case, local developments would be needed.

<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>

Potentially yes, in the cases of distribution. Needs to address the different local requirements for proof of delivery.

<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>

Every change made in the KID process implies a high investment from firms. In that sense, modifications should enter into force at the same time and in no circumstance before 2022.

Not only for cost reasons, but also for the sake of clarity and transparency we consider very important that the date for implementation will be the same for all products which will apply the new KID.

Not only the same date of entry into force is important. Also manufacturers should have enough time to implement changes. A challenging timing to implement the amendments will limit the possibility of entities to adapt to new requirements, approaches or new technological developments. In this sense, the implementation timing needs to be adequate and in no case will any of the modifications introduced by the new regulations enter into force before 2022.

In this sense, we believe that the amendments should apply to everyone on the same date, 01/01/2022. This would increase transparency and it will be easier to understand changes to investors, and more time would be available to better manage the implementation.

<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>

See Q3. We do not agree with a graduated approach, as it would be confusing and difficult to explain every single change that takes place.

<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>

Some important issues regarding application of PRIIPS Regulation are still needed of clarifications from ESAs

1.-The limitation to 3 pages should be reconsidered as complex products are already very tight and new requirements are envisaged that could potentially increase the length of the documents. We would propose to increase the KID to 4 sheets maximum space. Although we are aware that this is a Level 1 requirement, ESAS should promote the adequate adjustment in Regulation in order to achieve an effective and useful document.

2.- We believe that this review should be used to improve the alignment of the MiFID II regulatory package. In order to favour the harmonisation of the information disclosed to the investor and its better understanding, it would be necessary to unify related issues in MiFID II and PRIIPs, such as the concept of fair value and remote communication.

3.- Products in scope:

The application of PRIIPs Regulation confirmed that there is a lack of clarification on the different products in scope. Despite the requests for clarification officially raised by industry, this point remains unclear with important consequences on level playing field

Hence, it is of the outmost importance that the ESAs provides its own interpretation regarding the inclusion (or exclusion) of some in/out the scope of the regulation, helping the banking and financial industry to overcome the current uncertainties.

Our evidence is that existing uncertainty has led to divergent applications by national competent authorities (NCAs) with negative consequences for achieving uniform levels of retail investor protection and a level playing field amongst product manufacturers and distributors within the EU.

Namely, it is needed the Join Committee and/or ESMA to clearly state that PRIIPs Regulation does not cover FX forwards, as it is being the case where these products are considered in scope by some NCAs, while others considered them out of scope.

This matter is getting of a remarkable importance not only for level playing reasons between jurisdictions already stated, but also because there are other players in the market (“FX platforms” or “payment platforms”) which are taking the advantage of not being subject to strict supervision in the distribution of these products.

Article 4(1) of the PRIIPs Regulation defines a PRIIP as: “an ***investment***, including instruments issued by special purpose vehicles as defined in point (26) of Article 13 of Directive 2009/138/EC or securitization special purpose entities as defined in point (an) of Article 4(1) of the Directive 2011/61/EU of the European Parliament and of the Council ( 2 ), where, regardless of the legal form of the investment, the ***amount repayable*** to the retail investor is ***subject to fluctuations*** because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor.”

First, FX forwards, are not “investments” in the conventional meaning under which a retail investor invests an amount at the beginning of the product’s term and receives an amount on its maturity. Nevertheless, this characteristic could also be shared by other OTC derivatives for which the regulation states “derivatives covered by the regulation” so a further analysis must have been done by the NCAs that have concluded that FX forwards are out of scope.

It can be concluded that OTC derivatives are covered by the PRIIPs Regulation only if they meet all criteria mentioned in Article 4(1): the “amount repayable” and “subject to fluctuations” criterion needs to be interpreted.

While it is true that OTC derivatives can be seeing as meeting the “subject to fluctuations” criterion, in the case of some products, such as FX forwards, the amounts to be paid by the two parties (the bank and retail investor) are already fixed when the agreement is concluded. The key question with FX forwards is whether, owing to fluctuations, uncertainty exists about the “amount repayable”.

Parameters of a deliverable FX forward are fixed when the agreement is concluded and do not change during its term. All essential elements are fixed on the trade date; only the fulfilment of the obligations entered is deferred to a later point in time. The payment flows received or paid by the retail investor are not subject to any fluctuations. Not only does a firm basis exist for calculating the amount repayable, but the actual amount itself is certain/fixed when the trade is done. The only element which may be subject to fluctuations is the market value of the FX forward, but this is an aspect which is not relevant to the term “amount repayable” within the meaning of Article 4(1) of the PRIIPs Regulation.

**FX forwards with physical delivery in deliverable currencies are not under Article 4(1) of the PRIIPs Regulation scope as there is no uncertainty about the “amount repayable”**. All parameters are fixed when the FX forward contract is concluded. The parameters of the underlying transaction do not need to be considered since these are unrelated to the FX forward.

It is understood that this rationale has led some NCAs to conclude that FX forwards are out scope of PRIIPs, but it seems other NCAs have not completed the analysis.

In this sense, due to the important reasons mentioned, level playing field between jurisdictions, retail clients not to be confused and the existence of other players which may not be fulfilling with current obligations in the distribution of FX products, **it is understood that it is necessary for the European authorities to confirm FX Forwards are exempt from complying with the Regulation**.

Otherwise we will find ourselves facing a lack of harmonization in the market, where certain entities will consider that they should elaborate a KID and FX Forwards, while others will understand otherwise. In this way, it will be going against the spirit of the rule, which is to provide customers with comparable information between products of the different participating entities in each market. If we are faced with a situation in which certain entities offer the KID of the FX Forwards while others do not, there will be confusion in the retail clients that will damage the perception of the PRIIPs Regulation as a fundamental.

4.- Website publication:

PRIIPS Regulation obliges manufacturers of PRIIPs which are made available to retail investors to publish the KIDs for such products on its website. Publication is useful for retail clients as it allows them to compare products from different manufacturers. However, this is true only in the context of products which are available for sale to the mass market without restriction. In case of PRIIPs which are OTC derivatives and therefore that are tailor made for specific needs of a particular client, it is asserted that the publication of KIDs on the manufacturer’s website should not be necessary and moreover could potentially end up being misleading for clients.

In respect of PRIIPS which are OTC derivatives, permission to prepare ‘generic’ KIDs has been granted in view of the potential number of permutations and economic features of such transactions and in acknowledgement of the fact that it is impracticable to prepare a KID for every such permutation. However, even preparing a generic KID when there are some many variables at play raises concerns as to whether the KID satisfies the remit of being fair accurate and not misleading. As a matter of current practice therefore, clients purchasing OTC derivatives will often subsequently also receive a KID tailored to the specific transaction terms, subject to final negotiations (see next point ‘*KID delivery “in good time”*’’).

It is argued therefore that where there is no mass distribution of a product, the requirement of having the KIDs in the website should be waived, otherwise the website will be replete with a multitude of transaction specific KIDs which are of no relevance to anyone other than the particular investor with whom the OTC transaction has been entered into.

5.-KID delivery “in good time”:

The KID is a pre-trade document that is provided to the client and which sets out economic features of a proposed product. In the context of products which are negotiable transactions, such as OTC derivatives, it must follow that final agreed terms of the transaction may differ from those set out in the KID provided. It is asserted that the Level 3 documentation should include clarification that a KID may be representative of the proposed and transaction terms and that it need not be amended or updated following the agreement on the final terms of the relevant transaction. In this regard, it should be borne in mind that the stated purpose of the KID is the provision of key information concerning the product and also allowing the client to compare with other KIDs.

6.- GENERIC KIDS

The RTS permit a certain level of homogeneity in the KIDs for Exchange Traded Derivatives (ETD) products. Manufacturers are not required to update KIDs for Call, Put or Forward ETDs.

The ESAs appreciate also that manufacturers of OTC derivative transactions similarly require a certain level of flexibility in this regard in order to allow them to properly comply with the PRIIPS Regulation. The Q&A guidance relating to the preparation of a generic KID which covers several PRIIPS and sets out certain rules to be followed in this regard. In practice, market participants have experienced difficulties in applying these rules and consequently generic KIDs are only produced in limited situations leading to inefficiencies where manufacturers are being forced to prepare KIDs for each transaction in spite of the intention to the contrary in the legislation (see also paragraph ‘*Website Publication*’ above). As it has been said before in relation to the paragraph concerning ‘Objectives’, templates or examples of product description following the rules for generic KIDs should be provided.

7.- Article 5.2 PRIIPS Regulation

Pursuant to Article 5.2 of the PRIIPS Regulation, any “*Member State may require the ex ante notification of the key information document by the PRIIP manufacturer or the person selling a PRIIP to the competent authority for PRIIPs marketed in that Member State*”. Certain National Competent Authorities (**NCA**s), including Belgium, Italy and Portugal, have imposed such requirements and provided instructions with respect to the method by which such notification is to be made. However, no information has been provided as to which whom such responsibility lies and it is therefore not clear whether such obligation is imposed on the manufacturer of the PRIIP or the relevant distributor. We would assert that this should be the obligation of the person selling the PRIIP or making it available in that Member State and seek confirmation of this position.

When the person selling the PRIIP or making it available is not the manufacturer, it does not follow that the manufacturer will necessarily know or even be able to determine which Member States the distributor intends to sell the relevant PRIIP.

Notwithstanding that a distributor may request that a manufacturer prepare a KID in one or more languages it is not possible to correctly infer the necessary information from such a request. For example, a German manufacturer might prepare a KID in French because a distributor has asked for the KID to be so prepared, but it is also possible that such a KID could be provided to a retail client in France or in Belgium. We note also that in some Member States, the provision of the KID in English is also permitted, so a manufacturer that prepares and delivers a KID in English cannot know if the final retail client is in the UK, Ireland or any of those other countries in which it is so permitted to provide English language KIDs.

As such we would as for clarity with respect to with whom this responsibility lies. Moreover, this issue should not be subject to the agreement between the parties as otherwise inefficiencies will ensure and in order to be always in compliant the NCAs will potentially receive duplicate KIDs that will only hinder their supervisory role.

8.- Requirements imposed by some NCAs.

 The KID a document that has been designed in order to allow the retail clients to compare different product of different manufacturers and this supposes that the content should be the same across different EEE countries. This means that the guidance should be unified (as in some aspects that are included in the Q&A) but guidance instructed by each NCA should be avoided. Manufacturers need to have clear instructions to

prepare KIDs and country specialties creates a unlevel playing field among different jurisdictions and it is contrary to the spirit of the Regulation .

a) Inclusion of a bail-in risk paragraph. This bail in risk is already included in the pre trade information (according to article 48.2 c of the Delegated Regulation 2017/565) and also in the agreements according to Circular 1/2018 by CNMV.

Therefore, nowadays Spanish banks when acting as manufacturers of PRIIPS, are including in the KIDs a Bail-in risk warning, and this situation is not equal in other EU countries. The Final Report should clarify this situation and, if necessary the amended RTS may include a wording to be included in this case, so that retail clients are able to better compare products, as it is done with other narratives.

b)Performance scenarios in EUR (for FX transactions) when this currency is involved in the transaction. This has been specifically required in deliverable FX forwards, even if the client does not receive an amount in EUR. The instruction should be the same in all countries in order to maintain the equal application of the Regulation. Otherwise, manufacturers (and the software that prepares the performance scenarios) will have to adapt the KID to the country where they are selling, or, the clients may receive KID that are not able to compare if the criteria are different.

c) Fair value: the RTS defines what the “fair value” is in relation to the calculation of costs ( annex VI part 1 point 38) as follows “Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction in the principal (or most advantageous) market at the measurement date under current market conditions (i.e. an exit price) regardless of whether that price is directly observable or estimated using another valuation technique”.

It should be clarified that the fair value depends on the position of the client, if it is buying or selling the specific PRIIPs as all the financial instruments have a bid-ask range of prices, not a unique (mid) fair value.

9.- Other topics to be considered:

* “How can I complain?”. According to the Regulation and the RTS the field “How can I complain?” has to include information about the steps to be followed for lodging a complaint, the website and the postal and email address for sending the complaints (article 7 RTS). This article does not require including any additional step that the client may follow in complaining (for example, additional departments of the manufacturer that also review client complaints or courts) or even the same information in relation to complaints in the NCAs (including the website, address). That information is redundant and including it reduces the space for other information that has to be disclosed to the client. It has to be clarified (in the RTS or a Q&A) which is the information to be included.

* Cancellation cost: the cost and charges charts include several types of costs.

Apart from those costs, some products may have cancellation costs, but there is no special field for that purpose. Clients may understand that there is no penalty cost (8.2.2. of the CP), but there is no proposal of how to improve this information. We suggest including a field in the cost section instead of including the information separately in the RHP section. Additionally, MIFID and PRIIPS should be coordinated to inform only once about the product costs in case of retail investors.

* -Autocallable products: in the previous CP, there was a question in relation to autocallable products, about the way to reflect the early cancellation in the performance scenarios. In this CP there is no discussion, it has been included as a proposed amendment to the RTS (annex V paragraph 5 of Part 1). Taking into account that in this Consultation Paper the deletion of the intermediate scenarios is proposed, some additional explanation is needed about how to present the results of all the products that can be early called.
* Terminology: the prescribed wording in the RTS sometimes is not sufficiently accurate to be useful and not misleading for retail clients. It should allow different possibilities when referring to the product, the Issuer/Manufacturer…

<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 consider that the PRIIPs Q&A 20 November 2017 should go one step further, and extend the possibility of using the pay-off structure graph for all those products that offer high levels of standardization, since it facilitates their understanding.

We consider that the intermediate scenario should be eliminated when an early sale of the product is not possible as it causes confusion to the investor.

<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>

Two alternatives.

1.- use the same methodology for the calculation of the scenarios at intermediate date, showing then percentiles 10, 50 and 90 at that date. Number of calculations should be reduced in comparison

2.- Linear interpolation of the scenarios from offer price to the scenarios at RHP.

<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>

Perhaps showing percentile 1 or 2.

<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>

We consider that the use of any country-specific reference rate should be avoided. We believe that the sources to be used should be internal o general sources for all countries, such as Bloomberg contributions, in order to ensure a level played field.

In this sense, there should be a repository table provided by the ESAS or ESMA where to download the reference rate per Underlying/Country/Term. In case of doubt or inexistence at the table, the producer should derive the reference rate as prescribed.

<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>

It makes sense but obliges to calculate risk premium per underlying separately, or to maintain a table with the specific table per underlying/Asset.

We believe that the use of simple methodologies should be promoted, that would allow comparison of results (and therefore should not be considered, for example, country divisions) and that would provide information easily understood by the investor.

In this sense, this table should be centralized/Maintained by the ESA’s / ESMA to ensure consistency among all manufacturers and to ensure comparability.

*“Equity instruments: Dividend rate (and all other distributions, including share buybacks)* ***received by the end investor*** *in the PRIIP“*

Structured products that do not distribute dividends to the investor would have a zero asset-specific risk premium. In this case it might make sense to have a risk premium table per cap factor/sector/etc… maintained by ESA/ESMA.

<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>

Both are reasonable as long as it is clearly prescribed and comparability /consistency is ensured.

<ESA\_QUESTION\_PKID\_11>

* : How should share buyback rates be estimated?

<ESA\_QUESTION\_PKID\_12>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Implied volatilities should not be used unless a table with the volatility level to use by underlying is published and maintained by the ESAS/ESMA, or a clear definition that ensures comparability and consistency is produced. Using implied volatilities instead of historical has advantages, but comparability is more difficult to achieve, and not every underlying has listed options on it. Also, if implied volatilities are used, implied correlations should also be used, increasing complexity exponentially.

So we do not advocate using implied volatility. Using implied volatility has its own set of problems even if the underlying has listed options on it: implied volatility skew, extrapolation/interpolation of implied volatility for non-listed maturities, model-dependency of implied volatility… Historical realized variance is a reasonable estimator for future variance in this context.

<ESA\_QUESTION\_PKID\_14>

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

<ESA\_QUESTION\_PKID\_15>

Yes, in order to allow for corrections in case extreme events affect the scenarios shown.

<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>

We would consider number 3 only, as number 1 and 2 obliges to automatically backtest the products in order to fix the maximum level observed thus increasing the complexity on automatic processes. In case the stress scenario is adjusted, comparability is ensured on the 3 other scenarios, and stress should appear lower than the negative scenario.

<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>

TYPE YOUR TEXT HERE

<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>

Need to compare results in order to have an opinion. From the investor point of view, it could provide unrealistic scenarios not adapted to the volatility of the underlying traded

<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, it looks too simple, probably loses information on geographical/sector differences.

<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>

TYPE YOUR TEXT HERE

<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, it makes sense to address them and check comparability of results. Not sure if higher complexity provides a more realistic profile, but needs to be tested and compared with actual results.

<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>

TYPE YOUR TEXT HERE

<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>

Only one approach should be used unless 3 pages space limitation is addressed.

Not sure if showing both scenarios make sense or creates confusion to the investors. Adding more complexity to the KID will not help the investor's understanding of the product Clearly illustrative scenarios are very useful for the understanding of the product.

<ESA\_QUESTION\_PKID\_23>

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

<ESA\_QUESTION\_PKID\_24>

It could be considered.

<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 possibility should be considered for all products, not only for structured products. In any case, if illustrative scenarios are chosen, it should be considered: (i) that this possibility does not open the door for national authorities to impose additional obligations, and (ii) that it applies to product families where the investor's understanding is encouraged.

Probably Credit Linked, puttable or Issuer callable products wouldn´t fit within the definition.

<ESA\_QUESTION\_PKID\_25>

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

<ESA\_QUESTION\_PKID\_26>

We don´t find adequate including information on past performance in the KID anyway. We consider that this additional information could lead clients to confusion instead of enabling them to better understand the range of possible returns displayed in the future performance scenarios. An excesive amount of information in the KID may cause undue misinterpretations, and given that not all products will include this information comparison between products would not always be possible.

However, we understand the value it provides and the current use within the UCITs KII documents. Information on past performance should only be included in the KID where it is available and when it provides value to the investors. It means, to be optional.

In our opinion, in some case the KID would be much more balanced with a better definition of future performance scenarios not taking into account historic data. However, historic information could be interesting in case of UCITs Funds.

There are a number of challenges to include past performance information, such as: The existence of enough historic data, difficulties to track manager decisions on dynamic allocation Yes, there are a number of challenges to include past performance information, such as: The existence of enough historic data, difficulties to track manager decisions on dynamic allocation products, the costs of implementation and space limitation in the KID document.

In addition, limitation of space and complexity of calculations to be considered.

<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>

TYPE YOUR TEXT HERE

<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>

Narratives help, but the problem in the scenarios does not come from narratives or the lack of them. Also, we need to bear in mind that KIDs are already very tight in space in many cases, so the 3 pages limitation is a concern when introducing new narratives.

In any case, improved texts are better than the current situation. The proposal to modify the narrative explanations in Annex V to explain the relation-ship between past performance and future scenarios and to stress the messages that scenarios are based on simulations and do not grant future performance are positive from a client perspective and will help retail investors to manage expectations with regards to their investment returns.

However, we consider that this modification should be implemented as an optionality for each entity.

<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>

TYPE YOUR TEXT HERE

<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>

We consider that it is more appropriate and simple to establish fixed intermediate periods, and it would be advisable to legally establish such periods, especially for those financial instruments that are long-term. In this sense standardised periods will make comparison between different products easier for investors.

<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>

We think the proposal is reasonable.

<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>

It depends on the financial instrument, but we believe it is easier for the client to understand the option (i) use an annual average cost figure at the recommended holding period.

<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>

We are concerned that including new pieces of information in the KID is a challenge taking into account the 3-page space limitation. Any further information required would mean a change in the current information provided and may need more than 3 pages.

Even consumers associations are concerned about the enormous amount of figures already include in the KID. So much information can lead to misunderstandings.

<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>

We believe that no option is easy for the investor to understand. Options 2 and 3 involve a lot of information, option 4 could open the door to different interpretations, and option 1 may give the same problems we face with the current cost methodology.

Said that, option 3 seems to us to be the most useful for the client to understand the costs associated with the financial instrument in which he is interested.

<ESA\_QUESTION\_PKID\_39>

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

<ESA\_QUESTION\_PKID\_40>

As stated in Q39, option 3 is considered the “least undesirable”. We want to stress the 3 pages limitation. As stated in Q 5 the level 1 three pages limitation 1 removal should be considered.

<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, it is an improvement by providing more detailed and clearer information. Although it is necessary to take into account the costs of development of the systems that these changes imply. In this sense the need of enough time for adaptation and January 2022 as the date of entry into force of any modification should be stressed.

<ESA\_QUESTION\_PKID\_41>

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

<ESA\_QUESTION\_PKID\_42>

Comments on Table 1 and 2 of Option 3 proposed by ESMA:

- We would like to propose to incorporate in the two tables, information in 2 moments of time (in a fixed intermediate period and at expiration or at least in the recommended maintenance period) therefore the tables should have at least 2 columns:

Additional comments on Table 2:

- In relation to the column "Description of costs" eliminate the % of the cost on the investment or in case it is necessary to be able to indicate on what it has been calculated (notional, premium, nominal,...).

Additionally, there is a discrepancy between the Description of cost column, which requests information on the percentage, and the Costs over time column, which requests information in monetary units and at different times of time, making the information between the two columns incompatible.

- In relation to the section Type of cost:

* One -off cots:

- Entry costs:

* Description of cost (information in %): we propose to include that the information be provided in principal amount (nominal) or on the notional amount (for derivatives). How options should be reported should be indicated.
* In the event that the product is admitted to trading on a market, indicate how the information should be given on the subscription periods in which the price is fixed at the beginning of the period and how the information should be provided when it is admitted to trading on a market (secondary market).
* “Where the costs are embedded in the price or premium: These costs are already included in the [price / premium] you pay” : We propose to eliminate premium. The premium is also a price, so it is sufficient to indicate Price and it does not give rise to misunderstandings.

- Exit costs (C&G at maturity and C&G in case of early exit are included).

* There cannot be a single % on the nominal/cash/notional because they are different according to the time of departure. We do not understand the table because we believe that they cannot be added because the two cannot be applied at the same time.

We propose to include in the table the difference of the two types of exit costs in two rows with C&G information in € and in % (and in each one to include the explanation of what it refers to).

* C&G in case of early sale: we recommend incorporating it in the wording of the table which is an estimate and include an explanation.
* Description of cost (information in %): we propose to include that the information be provided in principal amount or on the notional amount (for derivatives). It should indicate how options should be reported

<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>

TYPE YOUR TEXT HERE

<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>

From our point of view it does not make sense to impose on manufacturers the obligation to prepare a KII under the PRIIPs regulations and a KII under the UCITS regulations for distribution depending on the group to which it is addressed. This is not only because of the cost that manufacturers must bear for the elaboration, update and publication of two documents with basic information about the same product, but also because the information required by each regulation differs in relevant aspects as the methodology for the calculation risks, performances and costs.

It would be discriminatory for the shareholders of both groups to have a pre-contractual legal document different from that of the other group, especially when the UCITS KII (which would be addressed to professional clients) collects more information, and, in our opinion, more appropriate and of greater relevance for this type of products, than the KII of PRIIPs.

Additionally, we believe it is necessary to take advantage of this review to reconsider the obligation provided in the UCITS Directive to provide the KII to both retail and professional clients. PRIIPS regulation determines that this document is only necessary for retail customers, in that sense Regulation (EU) No 1286/2014, On section 12 states that “where a product is not sold to retail investors, there should be no obligation to draw up a key information document…”

In the same way pre-contractual documentation is regulated in Directive 2011/61 / EU. To the extent that the arguments should be valid for all types of financial instruments and considering the experience and knowledge of non-retail investors, this is the moment to drive a regulatory change in UCITS regulations in order to eliminate the obligation to deliver to professional clients the KII. In any case, they would have access to the KII, as it is necessarily available to the general public both on the manufacturer or marketer website, and on the supervisor website.

Our concrete proposal is therefore:

i. There must be only one KII, under the UCITS or PRIIPS regulations, as finally determined and

ii. It shouldn’t be a mandatory document (neither for non-retail investors nor under the CITS/AIFMD protection) for non retail investors, without prejudice to the possibility of being consulted by professional investor on the website of the manufacturer or distributor

<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>

In accordance with the ESMA criteria, stated in the Q&A document on UCITS, existing investors should be provided with a KII in the case of additional investments, on the basis that the KII is a pre-contractual document and each additional subscription is a new contract. However, where unit holders in a UCITS invest through a regular saving plan, a KII is not required in relation to the periodic subscription, unless a change is made to the subscription arrangement.

ESMA also considers that if the UCITS KII is updated due to the renewed past performance section, for example, the existing customer will not receive the updated KII.

Art. 13 (4) PRIIPs regulation states that the KII must be delivered to the investor prior to the first transaction, in case of successive subscriptions, and to the first transaction after the KII has been revised in accordance with art. 10

From our point of view, whether it is periodic subscriptions or additional non-periodic subscriptions on a product already contracted, the delivery of the KIID should only be made when the investor subscribes the product the first time taking into account that:

-The KIID is a pre-contractual document, whose objective is to let the investor know the characteristics and risks of the product, for that reason would not be necessary to deliver it again in the case of additional subscriptions, since it was already supplied on the occasion of the first purchase.

,- The updated KID will always be available to investors on the website of the manufacturer or distributor to be consulted by the participants.

- In the event that the fund undergoes relevant modifications, the participants or shareholders will be specifically informed recognizing, in general, a right to vote (in the case of companies) or a right for reimbursement without costs (in the case of funds).

In view of the above, we propose the amendment of Article 13.4 and 14.5 of Regulation (EU) 1286/2014 of the European Parliament and of the Council of November 26, 2014 to be worded as follows:

“Art 13.4: The obligation to deliver the KIID will refer only to the first subscription. However, prior to an additional subscription, the latest revised version of the KIID will be provided to the retail investor who requests it.

Art. 14.5: In the event that the KII has been reviewed in accordance with Article 10, the previous versions will be provided to the retail investor who requests it”

t<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>

In the case of articles 4.4 and 4.12 of Regulation 583/2010 which are intended to be included in the Delegated Regulation 2017/653, given that their purpose is specific to Collective Investment Institutions, we do not consider it appropriate to extend their application to other PRIIPS products.

With regard article 4.6 of Regulation 583/2010 which is intended to be included in Delegated Regulation 2017/653, we do not see any objection to extend its application to other PRIIPS products, although we do not consider appropriate to modify the wording of article 4.6 of Regulation 583/2010 itself

<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>

With regard questions 5 and 7 in Section II of ESMA's Q&A document on the UCITS Directive which is intended to be included in the Delegated Regulation 2017/653, we see no objection to extend its application to PRIIPS products other than CIIs with regard to the first paragraph of the proposed text.

<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>

Given that the purpose of the articles of Regulation 583/2010 that are intended to be included in the Delegated Regulation 2017/653 is specific to collective investment institutions, we do not consider it appropriate to extend their application to PRIIPS products other than CIIs.

<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>

Given that the purpose of the articles of Regulation 583/2010 that are intended to be included in the Delegated Regulation 2017/653 is specific to collective investment institutions, we do not consider it appropriate to extend their application to PRIIPS products other than CIIs.

<ESA\_QUESTION\_PKID\_49>

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

<ESA\_QUESTION\_PKID\_50>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_50>

* : 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>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_53>

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

<ESA\_QUESTION\_PKID\_54>

It is a type of product, in which the customer can choose the underlying asset, it is not clear how the KID would be produced in these cases. We understand that it would be sufficient to make a general KID and not to make as many kids as underlying assets. We would like to clarify this point, in order to make it clear how to act in these cases

<ESA\_QUESTION\_PKID\_54>

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

<ESA\_QUESTION\_PKID\_55>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_55>

* : Are you able to provide information on the implementation costs of the proposed changes, in particular regarding, (1) the proposed revised methodology for performance scenarios (using a reference rate and asset specific risk premia), and (2) the overall changes to the KID template?

<ESA\_QUESTION\_PKID\_56>

TYPE YOUR TEXT HERE

<ESA\_QUESTION\_PKID\_56>

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

<ESA\_QUESTION\_PKID\_57>

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<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)