|  |
| --- |
| 16 October 2019 |

|  |
| --- |
| Response form for the Joint Consultation Paper concerning amendments to the PRIIPs KID |
|  |

|  |
| --- |
| 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 | Swedish Securities Dealers Association (SSDA) |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Sweden |

# Introduction

Please make your introductory comments below, if any:

<ESA\_COMMENT\_PKID\_1>

The SSDA welcomes the opportunity of responding to Joint Committees Consultation regarding certain amendments to PRIIPs regulatory technical standards. Before answering the specific questions we would however like to make the following general comments:

* The SSDA welcomes the ESA statement from 24 October 2019 regarding PRIIPs scope***[[4]](#footnote-5)*** for corporate bonds, but would welcome further clarification as to the intended scope on Level 1. Moreover, we would like to underline that since PRIIPs definition refers to packaged investment products, also derivatives which are only used to mitigate risk (hedging) should be excluded from scope (see below Q 6).
* The SSDA regrets that the Commission has not conducted a more comprehensive consumer testing of the proposals in this Consultation Paper, in particular regarding the cost & charges information. Indeed, it would be most unfortunate if, even with the proposed amendments, the information included in the KID is not understood by retail clients. It is also problematic that consumer testing is not conducted at all on derivatives. When derivatives are used for mitigating risk rather than taking risk, the KID in its current state is misleading and confusing and should therefore have been tested on consumers.
* Though the aim of comparability of the PRIIP KID documents is admirable – the comparability should only be a priority for de-facto comparable products. For instance, investors do not compare OTC derivatives with investment funds and comparability at the cost of precision and adequate information should therefore not be the result. Having similar documents also sends a message that the products are comparable and could trigger confusion rather than clarity for investors especially when the terminology in the derivative markets are very different from investment products.

The SSDA supports that the amendments proposed in this Consultation Paper should be implemented at one point in time. We believe that a step-by-step approach would in fact be more administratively burdensome and costly for firms. However, it is important to ensure that investment firms are given sufficient time to adapt to the new rules, as it will require substantive changes to IT systems.

* The SSDA would like to underline that the market structure in Member States differ e.g. depending on the tax legislation, pension and insurance systems and cultural behaviour. It is important not to make changes to the PRIIPs level 2 that would harm well-functioning local markets. For this reason, the SSDA strongly objects to the proposed amendments regarding MOP (article 10) as they appear contrary to the PRIIPs Regulation at Level 1 and also because these changes would not have a material benefit to retail clients investing in Swedish Insurance Based Investment Products (IBIPs).
* In our experience, contradictory, overlapping and complex disclosure requirements may discourage retail clients from investing in financial instruments. Therefore, the SSDA considers that it is important not to stop at the targeted amendments included in this Consultation Paper but to continue the work in the context of CMU 2.0. In fact, we propose that the CMU 2.0 should include a horizontal review of the pre contractual disclosures to retail clients in EU financial legislation, i.e. covering the Prospectus Regulation, MiFID II, PRIIPS, IDD and UCITS on an appropriate legislative level. In order for such long term review project to be successful, it is important that proposals for legislative amendments are made subject to in-depth consultations with stakeholders as well as consumer testing activities.

<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>

Art 14 in the PRIIPs Regulation states that the default option in a physical meeting is that the retail investor shall receive the KID in paper format and that the retail investor in other circumstances can receive the KID through a durable medium other than paper or through the publication of the KID on a website. There are however several conditions to be fulfilled to be allowed to provide the KID in that manner, the most prominent being that the retail investor shall have chosen that type of medium in a way that can be evidenced. We would propose that the default option is for the retail investor to receive the KID in a digital format (either through a website or a durable medium) but that the KID can be provided to the retail investor in paper format upon request. The overarching principle from an investor protection perspective should be that the retail investor actually receives the KID not in what format it is provided.

<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>

No answer

<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>

The SSDA considers that all amendments should be implemented at the beginning of 2022 when the rules start to apply for UCITS and AIF, allowing firms sufficient implementation time to make necessary changes in IT systems and staff training

<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>

The SSDA considers that a graduated approach would be very costly and burdensome for investment firms. Also, from a client perspective it is better to change the rules at one point in time, e.g. to facilitate comparability between products.

<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>

MiFID/PRIIPs alignment

The Consultation Paper includes proposals which to some extent would align MiFID II and PRIIPs as regards cost disclosure. The SSDA supports the option where the total costs can be included in the PRIIPs tables for MiFID II instruments whilst allowing only the RYI to be used for other products where relevant, such as insurance contracts.

However, there are also other issues in relation to MiFID II/PRIIPs alignment which should be considered.

* FX contracts as means of payment/non-financial instrument
* Notion of “market value” vs “arrival price”
* Distance communication; rules should be the same
* Inducements (cost or service)
* Language requirements

PRIIPs scope

The SSDA strongly support that the co-legislators should introduce amendments to PRIIPs Regulation in order to specify more the instruments which fall within the scope of the Regulation.

*Corporate bonds*

In the opinion of the SSDA it is very important that the PRIIPs scope is clarified by the Commission as soon as possible. This is important in order to avoid negative effects for the liquidity on the corporate bond market as a result of the uncertainty regarding whether or not they fall under the scope of PRIIPs. The SSDA supports the statement published by the Joint Committee dated 24 October 2019[[5]](#footnote-6) and urge the Commission to take the initiatives which are required for changes to level 1, in accordance with the ESAs statement.

*Derivatives*

The SSDA is of the opinion that derivative products used for mitigating risk (hedging) should be excluded from the PRIIPs scope as these are not “investments”. If a change as regards PRIIPs scope cannot be achieved, at least it should be possible to adjust the KID for these types of derivative contracts in order to ensure that the information is relevant and not misleading for clients.

For example, for FX Forwards (which are exempt in Art 10 in the Delegated Act to MIFID II if regarded as “means for payments”), the KID in its current form shouldn’t be used since it is confusing to clients to apply these pre contractual disclosure requirement to contracts which are not financial instruments. Also for other hedging derivatives it is misleading to use terminology such as “investments” and “return” in the KID document.

In the SRI most OTC derivatives would end up with a risk score of 7, disregarding that the product as such has a hedging purpose and therefore is intended to mitigate risk rather than to entail risk. Furthermore, there is a limited possibility to describe the risk-reward profile for these products and it is challenging to describe maximum loss and capital protection.

With regard to the performance scenarios, the following should be considered for hedging derivatives

* The assumptions underpinning the performance scenarios are not transparent nor relevant for the customers. It is furthermore very difficult to explain the performance scenarios and how they relate to the purpose of the customer to purchase the product (mitigation of risk);
* The outcome of the performance scenarios is in some instances very odd and give the impression of either a negative outcome in all scenarios or a positive outcome in all scenarios. This is not only based on the positive performance of some asset classes during the last five years (which was the basis for the warning text introduced in the joint ESA supervisory statement from 8 February 2019) but rather on the calculation method as such.
* The performance scenarios are based on an invested amount but from a hedging instruments point of view that is less relevant, as the nominal amount serve as the basis for calculations of the payments to be made under the transaction rather than being an invested amount.

Given the issues presented above, our general view is that it would be desirable if the heading and static text is allowed to be changed depending on whether the instrument is to be used for investment or hedging

<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>

* intermediate scenarios (future scenarios for periods shorter than the recommended holding period) should be included;

Intermediate Holding Periods (IHPs) are an important part of the Performance Scenarios section. Retail investors tend to change their minds regarding their investments. They may regret holding a product for the Recommended Holding Period (RHP). Therefore, it is important to reflect the effect of high volatility in the short-term. For example, the performance of an equity fund over a 5-year period in the unfavourable scenario might be around minus 5% per annum – a relatively moderate negative performance that an investor might feel comfortable with. However, the same equity fund will experience a much higher loss of 30% in the unfavourable scenario after one year. Presenting only the returns at RHP will not demonstrate this phenomenon and therefore will not warn investors about the effect of their intention to exit early.

With respect to OTC products, we are firmly against using historical development as the basis for calculating and presenting future performance scenarios. This is mainly because for such products, historical development is irrelevant to future performance scenarios. We agree with the approach suggested by the ESAs where the future performance scenario will be based on a reference rate and an asset-specific risk premium, provided this method does not rely on historical performance as the current rules do. Without having more details of the proposed model, it is difficult to say much more.

* to indicate in the performance scenario table the estimated probability of each scenario;

The SSDA is of the opinion that it would be valuable for investors to also know the probability of the respective performance scenarios.

* a fourth (stress) scenario should be included or alternatively a row showing the minimum investment return;

The fourth stress scenario should not be excluded as is better explains the potential performance or outcome for e.g. structured products where different barriers may come into play in the stressed scenario, but not in the other three scenarios. The method for calculating the stressed scenario should be changed, however, so that it is based on the same method as the other three scenarios.

* past performance should be included in addition to forward looking performance scenarios;

Positive that past performance is not proposed for Category 1 and 3, this is something that the SSDA has argued for previously. For Category 2 past performance should be optional to present given that there is indeed sufficient historical data and that it is relevant to present.

Further, it is important that the past performance is presented together with a text stating clearly that past performance is not a guarantee for future performance. Also, the past performance should be presented for each year respectively and not as one average for the entire period since that would be contradictory to MiFID II.

* whether an illustrative approach (not based on probabilities) to future performance scenarios should be illustrated;

SSDA members are not in favour of the proposed illustrative (“what-if”) methodology for the following reasons:

1. First of all, we will lose comparability between products.
2. Even though at first glance it looks easy to implement, it might prove to be more complex than the existing methodology:
   1. Selecting in an automated way (i.e. by a system) the scenarios based on the various product features is not a simple task. For example, an Autocall product (sometimes called express certificate or a kick-out) might have various features (to name a few: same level for trigger and coupon, different levels for the two – sometimes called phoenix, two levels of coupons – sometimes called combo, European risk barrier, American risk barrier) and it is a complicated task to decide which ones to illustrate in a dedicated scenario.
   2. Products available on secondary market would need readjustments on a regular basis, as presented scenarios may become irrelevant. For example, at issue an Autocall product might show a scenario of early call after 3 months, but after 3 months have passed and the product was not redeemed, this scenario becomes impossible.
   3. The probability of certain features might become very low and including them in the performance scenarios might be misleading. For example, let’s assume for some reason we need to perform a KID update (e.g. because the SRI has changed) one day before an Autocall observation date, when the underlying is 40% below the trigger level. Including a scenario of an early call after one day is misleading. However, to exclude this scenario, a methodology to determine the probability of a scenario should be implemented.
   4. If we do want to paint a more reliable picture, we’d need to calculate the probability of the occurrence of each scenario, which is not an easy thing to do, and would actually bring us back to the original argument – it wouldn’t be simpler than the existing method. Finally, if the client is interested in what-if scenarios they can be viewed in the marketing material since they typically exist there anyway.

##### Finally, scenarios illustrating the product features are usually already drawn in the marketing materials.

<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>

Intermediate Holding Periods (IHPs) are an important part of the Performance Scenarios section. Retail investors tend to change their minds regarding their investments. They may regret holding a product for the Recommended Holding Period (RHP). Therefore, it is important to reflect the effect of high volatility in the short-term. For example, the performance of an equity fund over a 5-year period in the unfavourable scenario might be around minus 5% per annum – a relatively moderate negative performance that an investor might feel comfortable with. However, the same equity fund will experience a much higher loss of 30% in the unfavourable scenario after one year. Presenting only the returns at RHP will not demonstrate this phenomenon and therefore will not warn investors about the effect of their intention to exit early.

With respect to OTC products, we are firmly against using historical development as the basis for calculating and presenting future performance scenarios. This is mainly because for such products, historical development is irrelevant to future performance scenarios. We agree with the approach suggested by the ESAs where the future performance scenario will be based on a reference rate and an asset-specific risk premium. However, we reject the dividend-based approach and suggest a methodology based on historic volatility. (see answer to Q10).

<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>

The fourth stress scenario should not be excluded as is better explains the potential performance or outcome for e.g. structured products where different barriers may come into play in the stressed scenario, but not in the other three scenarios. The method for calculating the stressed scenario should be changed, however, so that it is based on the same method as the other three scenarios.

<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>

Independent of our objections to the currently used methodology as such, we are against using country-specific risk free rates. Instead we support currency area-specific risk free rates based on interest rate futures / swap curves. The reason for this position is that implementation efforts and costs for underlyings with a multi-country background (indices, mixed baskets etc) are huge, if any implementation (data source-wise) would be feasible at all

<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>

In line with EUSIPA, we reject the approach of a dividend-based methodology as a basis for establishing risk premiums for equity underlyings. We suggest to use for the purpose of easily calculating risk premium for equity underlyings, a new approach based on historic volatility data instead, under which a fixed risk premium is derived from a volatility range within which the underlying falls – see end of this section and attachment with full outline of the methodology and more details.)

The reasons for rejecting the dividend-based methodology are as follows: Using dividends to forecast performance could create highly biased results tweaked to the benefit of high dividend-paying underlyings (for call option based products) as the majority of structured products is based on price-return underlyings (where the investor is not entitled to receive dividends). Since call options on high-dividend underlyings are cheaper, the terms (e.g. participation rate) of structured products on those underlyings will be better than structured products on low/no-dividend underlyings. Assuming same growth rates for both will, according to the CP’s methodology, show misleadingly better scenarios for structured products on high-dividend underlyings.

Moreover, for structured products on “price-return” underlyings, a risk premia of zero plus a negative Eurozone interest rate would mean a negative growth rate for the scenario calculation.

While we support asset class-specific risk premia, we are opposed to risk premia linked to countries, sectors or single asset ratings.

In establishing a simplified risk premium for single asset classes, e.g. equities, we support the use of a simplified methodology which minimizes deviations across applicants/markets.

Based on a thorough analysis made on behalf of EUSIPA, we would support assigning risk premia for equity underlyings based on past volatility, grouped by buckets.<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>

We reject the dividend-based approach and suggest a methodology based on historic volatility. (see above answer to Q10).

<ESA\_QUESTION\_PKID\_11>

* : How should share buyback rates be estimated?

<ESA\_QUESTION\_PKID\_12>

We reject the dividend-based approach and suggest a methodology based on historic volatility. (see above 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>

No answer.

<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>

Without changing any statements made before on currently used methodologies or their suggested changes, we would, within the technical context of the KID calculations, support using historical returns for calculating future variance.

With respect to OTC derivatives, we would like to reiterate our answer to question 7 that we are firmly against using historical development as the basis for calculating and presenting future performance scenarios for OTC derivatives.

<ESA\_QUESTION\_PKID\_14>

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

<ESA\_QUESTION\_PKID\_15>

In general we are of the opinion that compensatory mechanisms should not be applied as it will impair comparability. As previously specified, we believe that OTC derivatives used for hedging purposes should be out of scope. If they are not, compensatory mechanisms should be possible to apply for OTC derivatives. In this regard we must emphasize that it is truly troublesome that consumer testing has not been conducted on derivatives.

<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>

In general we are of the opinion that compensatory mechanisms should not be applied as it will impair comparability. As previously specified, we believe that OTC derivatives used for hedging purposes should be out of scope. If they are not, compensatory mechanisms should be possible to apply for OTC derivatives as the outcomes might be misleading otherwise. In this regard we must emphasize that it is truly troublesome that consumer testing has not been conducted on derivatives.

<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>

No answer.

<ESA\_QUESTION\_PKID\_17>

* : What are your views on the use of a simplified approach such as the one detailed above, instead of the use of probabilistic methodologies with more granular asset specific requirements?

<ESA\_QUESTION\_PKID\_18>

We suggest amending the currently used methodology by introducing an equity risk premium based on past volatility. Reference is made to the answer provided in Q10.

<ESA\_QUESTION\_PKID\_18>

* : Do you consider the use of a single table of growth rates appropriate? If no, how should the methodology be amended?

<ESA\_QUESTION\_PKID\_19>

We suggest amending the currently used methodology by introducing an equity risk premium based on past volatility. Reference is made to the answer provided in Q10.

<ESA\_QUESTION\_PKID\_19>

* : More generally, do your views about the use of a probabilistic methodology vary depending on the type of product (e.g. structured products vs non-structured products, short-term vs long-term products)? For which type of products do you see more challenges to define a probabilistic methodology and to present the results to investors?

<ESA\_QUESTION\_PKID\_20>

The method chosen must be applicable for all products, irrespective of maturity.

<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>

No.

<ESA\_QUESTION\_PKID\_21>

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

<ESA\_QUESTION\_PKID\_22>

No.

<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 SSDA is not in favour of adding additional information in the form of illustrative (“what-if”) performance scenarios.

<ESA\_QUESTION\_PKID\_23>

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

<ESA\_QUESTION\_PKID\_24>

The SSDA is not in favour of the proposed illustrative (“what-if”) methodology for the following reasons:

1. First of all, we will lose comparability between products.
2. Even though at first glance it looks easy to implement, it might prove to be more complex than the existing methodology:
   1. Selecting in an automated way (i.e. by a system) the scenarios based on the various product features is not a simple task. For example, an Autocall product (sometimes called express certificate or a kick-out) might have various features (to name a few: same level for trigger and coupon, different levels for the two – sometimes called phoenix, two levels of coupons – sometimes called combo, European risk barrier, American risk barrier) and it is a complicated task to decide which ones to illustrate in a dedicated scenario.
   2. Products available on secondary market would need readjustments on a regular basis, as presented scenarios may become irrelevant. For example, at issue an Autocall product might show a scenario of early call after 3 months, but after 3 months have passed and the product was not redeemed, this scenario becomes impossible.
   3. The probability of certain features might become very low and including them in the performance scenarios might be misleading. For example, let’s assume for some reason we need to perform a KID update (e.g. because the SRI has changed) one day before an Autocall observation date, when the underlying is 40% below the trigger level. Including a scenario of an early call after one day is misleading. However, to exclude this scenario, a methodology to determine the probability of a scenario should be implemented.
   4. If we do want to paint a more reliable picture, we’d need to calculate the probability of the occurrence of each scenario, which is not an easy thing to do, and would actually bring us back to the original argument – it wouldn’t be simpler than the existing method. Finally, if the client is interested in what-if scenarios they can be viewed in the marketing material since they typically exist there anyway.

##### Finally, scenarios illustrating the product features are usually already drawn in the marketing materials.

<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 SSDA is not in favour of the proposed illustrative (“what-if”) methodology.

<ESA\_QUESTION\_PKID\_25>

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

<ESA\_QUESTION\_PKID\_26>

Positive that past performance is not proposed for Category 1 and 3, this is something that the SSDA has argued for previously. For Category 2 past performance should be optional to present depending on whether there is indeed sufficient historical data and that if it is relevant to present.

Further, it is important that the past performance is presented together with a text stating clearly that past performance is not a guarantee for future performance. Also, the past performance should be presented for each year respectively and not as one average for the entire period since that would be contradictory to MiFID II.

<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>

I.e. more extensive document. It would not change our answer to the previous question. Also, if the KID would be allowed to be extended for products presenting past performance, it should only be the part covering past performance that can exceed three pages.

<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>

Past performance should be presented for each year respectively and not as one average for the entire period since that would be contradictory to MiFID II.

<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>

No answer.

<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>

No answer.

<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[[6]](#footnote-7)?

<ESA\_QUESTION\_PKID\_31>

No answer.

<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>

No answer.

<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 agree that standardised periods will make comparison between different products easier for investors. However, the best solution would be to include only a one-year and recommended holding period (RHP) in the cost disclosure. This is important, as it reduces the amount of information being presented to retail 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 agree that standardised periods will make comparison between different products easier for investors. However, the best solution would be to include only a one-year and recommended holding period (RHP) in the cost disclosure. This is important, as it reduces the amount of information being presented to retail investors.

<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>

More figures are not necessarily better investor information. It can instead often confuse investors. We prefer the average annual cost figure, because investors are used to this approach and accumulated figures will be too dependent on recommended holding period. An average annual cost figure would make it easier for investors to compare products with different recommended holding periods.

<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 strongly support the ESAs’ intentions to improve comparability with MiFID II disclosures. Due to the vast majority of funds being distributed in a MiFID II environment, it is absolutely crucial that investors receive the same cost disclosures through the PRIIPs KID and MiFID ex-ante disclosures. It is, therefore, crucial to include the total costs as a percentage of the investment amount.

In order to avoid that the information is misunderstood we recommend that only a yearly percentage is shown which is aligned with MiFID II cost disclosure rules. Relying on cost figures that are dependent on RHP or the performance scenarios make comparison of costs across products difficult.

<ESA\_QUESTION\_PKID\_36>

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

<ESA\_QUESTION\_PKID\_37>

No answer.

<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>

No answer.

<ESA\_QUESTION\_PKID\_38>

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

<ESA\_QUESTION\_PKID\_39>

No, we do not. We prefer option 1 over option 3 since it has fewer data points without failing to explain RIY and that RIY is derived from the moderate scenario.

<ESA\_QUESTION\_PKID\_39>

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

<ESA\_QUESTION\_PKID\_40>

No, we do not. We prefer option 1 over option 3 since it has fewer data points without failing to explain RIY and that RIY is derived from the moderate scenario.

<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.

<ESA\_QUESTION\_PKID\_41>

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

<ESA\_QUESTION\_PKID\_42>

No.

<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>

No answer.

<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>

No answer.

<ESA\_QUESTION\_PKID\_44>

* : What are your views on the issue mentioned above for regular savings plans and the potential ways to address this issue?

<ESA\_QUESTION\_PKID\_45>

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

<ESA\_QUESTION\_PKID\_45>

* : Do you agree that these requirements from Article 4 should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIFs?

<ESA\_QUESTION\_PKID\_46>

No answer.

<ESA\_QUESTION\_PKID\_46>

* : Do you agree that this requirement should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIF?

<ESA\_QUESTION\_PKID\_47>

No answer.

<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>

No answer.

<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>

No answer.

<ESA\_QUESTION\_PKID\_49>

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

<ESA\_QUESTION\_PKID\_50>

As an initial general remark the SSDA is of the opinion that the question regarding changes to Articles 10-14 on the subject of MOPs should not be a part of the current review. The time is too short to work out and sufficiently analyse the consequences in all local markets. The SSDA is in this context wary of another “one-size fits all” approach.

Many insurance-based investment products (IBIPs) in Sweden allow the retail investor a choice between thousands of underlying investment options. The use of Article 10(a) for these products requires recalculation of almost an endless amount of combinations of the PRIIP and each underlying option, making it practically impossible. Therefore, the ability to make use of Article 10(b) is of utmost importance in the market as a whole. In this context the SSDA is of the opinion that the proposal would not be an improvement on the current approach.

The SSDA strongly objects to changes entailing that the specific information about the underlying investment options shall contain information about the IBIP as such and not only information about the underlying investment option in question. Firstly, introducing such a requirement seems contrary to the PRIIPs Regulation at Level 1 since Article 6(3) focuses on a completely generic KID which shall give reference to where and how more detailed information about underlying investment options can be found. Consequently, the SSDA finds it hard to lend support to a change which merges information regarding underlying investment options with information regarding the IBIP as such in the KID which is designed to give information about the underlying investment options. All information regarding the IBIP shall be in the KID for the IBIP, only coupled with generic information about the underlying investment options.

Secondly, the proposed changes would have a detrimental practical effect, to the cost of retail investors, on the Swedish market. Given that it is common that Swedish IBIPs have a very wide range of underlying investment options (especially UCITS funds) there is a quite a large mix of IBIP manufacturers, investment fund manufacturers and insurance distributors. One particular investment fund may thus be an underlying investment option in several insurance companies’ IBIPs and the same investment fund may be an underlying investment option in several of one insurance company’s IBIPs. The proposed changes to Article 10(b) and 14 would entail that fund companies would have to produce a relatively large number of KIDs for the same investment fund, one for the investment fund when sold as a stand-alone product and one for each and every IBIP in which the investment fund is included as an option. Considering the way that Swedish IBIP market works, this would amount to a an unproportionally large amount of KIDs containing in all material aspects the same information.

Alternatively, insurance companies would have to produce the KID with the specific information on the underlying investment funds for hundreds of investment funds themselves, even though the fund companies would also produce KIDs for the purpose of using the investment funds as stand-alone investments. The very same issue was noted and handled already at the time of the publication of the PRIIPs RTS when the possibility to use the UCITS KIIDs was introduced. When the UCITS exemption lapses, the natural thing would be to allow MOP producers to use the PRIIP KIDs, which for example fund companies will need to produce, as the reference to the specific information regarding the underlying investment options. Anything else would be economically indefensible in all senses.

<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>

In addition to the comments made under Q50, the SSDA wants to highlight it is already a challenge for many manufacturers to fit all the required information into the mandatory maximum length of three A4 pages. The proposed changes will only add to this challenge and any changes should therefore be subject to careful and thorough consideration.

<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>

The SSDA finds it hard to see that information or a reference to the cost of the wrapper in the specific information for the underlying investment option would make the relation between the costs of the MOP PRIIP and the underlying investment options any clearer. The distinction that there are costs for both the MOP PRIIP and the underlying investment options should be made clear in the generic KID for the MOP PRIIP. Thereby the retail investor will know that it is necessary to consult the specific information for the underlying investment options that are relevant for the retail investor in question, and what options to use is a highly individual matter. Introducing four underlying investment options in the generic KID from an available universe of hundreds of investment funds would not materially improve things for the retail investor. On the contrary it is likely to generate more investor confusion and a notion of that the four options included in the generic KID are the options recommended by the PRIIP manufacturer. It should be acknowledged that any form of examples will guide the retail investors when they are choosing the investment options for their MOP, even if it would be very clearly stated that the examples are "just examples" and not recommendations. We foresee a real risk that retail investors would simply go for the four options included in the KID without thoroughly thinking about whether that would be the best fit for them individually. One should also consider the risk of unserious distributors using these representative options as an easy way out in an advisory session, recommending that the retail investor should just invest accordingly with the line of arguments that they are the most frequently selected and specifically included in the KID based on a rigorous product approval process.

Furthermore, this approach could be seen as building additional conflicts of interests into firms’ processes. The current generic KIDs are product neutral in the sense that they do not specifically highlight some of the underlying investment options in particular. Changing this approach therefore seems to inflict a risk of damage to both retail investors and the firms producing the KIDs.

<ESA\_QUESTION\_PKID\_52>

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

<ESA\_QUESTION\_PKID\_53>

The SSDA agrees with the statement in the consultation document on page 54, that the main drawback of this proposal is that it introduces significantly more figures in the generic KID, which may be an overload of information for certain types of retail investor. Given that one of the objectives of the KID is to deliver clear and comprehensible information to retail investors it is very important to combat information overloads. Since this has already been defined as a main drawback, the SSDA considers that the proposal would not be an improvement.

In order to make things clearer for retail investors, the SSDA would rather support a separation of the costs of the MOP PRIIP (e.g. an insurance wrapper) and the costs of the underlying investment options in the generic KID. This could be beneficial and is something which could be looked into within coming consultations.

<ESA\_QUESTION\_PKID\_53>

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

<ESA\_QUESTION\_PKID\_54>

The ability to make use of Article 10(b) is of utmost importance in the market as a whole. In this context the SSDA is of the opinion that the proposal would not be an improvement on the current approach.

<ESA\_QUESTION\_PKID\_54>

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

<ESA\_QUESTION\_PKID\_55>

No answer.

<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>

No answer.

<ESA\_QUESTION\_PKID\_56>

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

<ESA\_QUESTION\_PKID\_57>

No answer.

<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. <https://www.esma.europa.eu/sites/default/files/library/jc-2019-64_priips_kid_supervisory_statement_bonds.pdf> [↑](#footnote-ref-5)
5. <https://www.esma.europa.eu/sites/default/files/library/jc-2019-64_priips_kid_supervisory_statement_bonds.pdf> [↑](#footnote-ref-6)
6. 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-7)