



European Securities and
Markets Authority

Reply form for the Consultation Paper on PRIIPs Key Information Documents



10 November 2015

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on PRIIPs Key Information Documents, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_PRIIPS_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_PRIIPS_NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_PRIIPS_XXXX_REPLYFORM or

ESMA_PRIIPS_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach us by **29 January 2016**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.



Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

Question 5

Are you of the view that the existence of a compensation or guarantee scheme should be taken into account in the credit risk assessment of a PRIIP? And if you agree, how would you propose to do so?

A compensation or guarantee scheme musn't be taken into account for three reasons.

Firstly, sovereign crisis clearly showed that even States can be in default.

Secondly, if a scheme can't pay, there is no obligation for the countries to compensate clients. See Cour AELE, 28 janvier 2013, case E-16/11, *EFTA Surveillance Authority c. l'État islandais*

Thirdly, we all know that a compensation or guarantee scheme will be totally incapable of facing the failure of systemically important institutions

Question 10

Are you aware of other circumstances in which the credit risk assessment should be assumed to be mitigated? If so, please explain why and to what degree it should be assumed to be mitigated?

To my knowledge, some insurers claim that they can get the best mark for their credit risk, whatever their personal characteristics, when being under the scope of Solvency II. This position is unacceptable.

Firstly, the credit institutions under the scope of CRD 4 could have the same claim with the result that there would be no more differences between all the products of the market on credit risk.

Secondly, apart from the hypothesis where a financial product is covered by specific guarantees, the notation of products depends on the notation of the companies that are at their origin. Any other approach would mislead investors.

Question 19

Do you think that estimating the fair value of biometric risk premiums as stated in paragraph 55(b) of Annex VI would raise any technical or practical difficulties?

If we understand properly the question, some people make a difference amongst some costs in order to exclude the cost linked to "the future service provided". This position is unacceptable. The total cost paid by clients must be calculated entirely and be disclosed to clients before accepting to invest into the product. It is the only way that enables clients to be aware of all the cost paid for the product they are buying and to compare efficiently the real costs of two products".

Question 20

Knowing that the cost element of the biometric risk premium is included in the total costs calculation, how do you think the investor might be most efficiently informed about the other part of the biometric risk premium (i.e. the fair value), and/or the size of biometric risk premium overall? Do you consider it useful to include the fair value in a separate line in the first table, potentially below the RIY? Or should information on the fair value be disclosed in another part of the KID (for instance, the "What is this product?" section, where the draft RTS currently disclose biometric risk premiums in total, and/or in the performance section)? What accompanying narrative text do you think is needed, and where should this be placed, including specifically narrative text in the cost section?



The total cost of the product must be disclosed in the same part of the document. It is the condition sine qua none for efficient information. If some costs are disclosed in a part where it is not expected, clients won't have a fair view of the cost.