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| 10 November 2015 |

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| Reply form for the  Consultation Paper on PRIIPs Key Information Documents |
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| Date: 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](http://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](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_PRIIPS\_1>

The CNMV Advisory Committee has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc.) and its opinions are independent from those of the CNMV.

Taken into account the fact that there has been a delay at the ESA’s level (e.g. the more technical discussion paper was expected in the spring of 2015, whereas it was only published in the summer 2015) and there have been certain errors in the consultation paper itself (in the risk/reward section) and a correction was only published on 05 January, the already tight deadlines are becoming even more challenging (31 March 2016 – delivery of final draft RTS to EU Commission, then adoption by the latter and followed by at least 2 month’s right of objection by the EU Parliament, Council) and leaving in the best case scenario only 6-7 months for the financial sector to implement the requirements coming out from PRIIPS and RTS which are rather complex (especially with regard to the risk calculations) from an operational and project management perspective.

All this combined with the need of PRIIPs being coordinated with MiFID II, where a delay is highly likely and that the ESAs are considering further and necessary Level-3 guidance on performance scenarios, which will take a few months for completion, leads the CNMV Consultative Committee to recall the ESAS to take into serious consideration a delay in the implementation of PRIIPS until 31 December 2017.

Scope

There still remains uncertainty regarding the scope for PRIIPs Key Information Documents. According to EU Regulation no. 1286/2014 a PRIIP is an investment product, and throughout the recitals and articles an investment with the purpose of obtaining a return based on a risk taken (speculation) seems to be in focus.

In Annex II, Part 1, 9(c) it is highlighted that all derivatives as defined in MiFID II are in the scope. But there is still no clarity as to whether derivatives are in the scope regardless of the underlying purpose – speculation respectively hedging (of commercial and/or investment risk). If derivatives used for hedging purposes are in the scope, the format and information contained in the KID could be misleading, as the purpose of the hedging strategy is to obtain exactly the opposite result of the derivative as a stand-alone investment.

Next to this, OTC derivatives that are used for hedging are agreed on a bilateral basis where one could wonder what is the added value of a KID in a situation where all the transaction details are tailor-made and agreed with the counterparty. Moreover, imposing a KID for OTC derivatives could simply not be a workable solution in practice.

Commercial hedging uses various derivatives, because banks provide this service, so the hedging client avoids the risk, when running a cross border business. If the cost associated and the administrative complications are too large, there is a risk of the banks only offering customized derivatives to very large corporate clients. Small and medium sized corporations will then only have access to standardized derivatives leaving them in a situation where they will either have to take too large a hedging position (=a speculative position in the derivative for the surplus) or an insufficient hedging position leaving them with a residual of the commercial risk of running a cross border operation.

<ESMA\_COMMENT\_ PRIIPS\_1>

***Question 1***

*Would you see merit in the ESAs clarifying further the criteria set out in Recital 18 mentioned above by way of guidelines?*

<ESMA\_QUESTION\_PRIIPS\_1>

Some of the criteria included in Recital 18, like “which retail investors do not commonly invest” “uses a number (?) of different mechanisms” ... are not specific, not objective legal criteria, so any guidance given by the ESAS would be welcomed by the industry and would certainly avoid divergences in national practices and , as a consequence, lack of comparability.

At Level 3 the ESAs have the power to develop guidelines which aim to ensure the common, uniform and consistent application of Union law, as well as setting a benchmark for consistent, efficient and effective supervisory practices and the relevant competent authorities must make every effort to comply and must explain if they do not intend to.

To conduct a review of the rules/guidelines that were launched at a national level in order to align them further where necessary with the rules that will be specified in the ESAs’ guidelines to avoid any discrepancies between Union law and national law, is also recommended. In this respect, it would generally seems sensible to align the inclusion of the comprehension alert with the definition of the complex products under MiFID II and IDD (insurance distribution directive).<ESMA\_QUESTION\_PRIIPS\_1>

***Question 2***

1. *Would you agree with the assumptions used for the proposed default amounts? Are you of the opinion that these prescribed amounts should be amended? If yes, how and why?*
2. *Would you favour an approach in which the prescribed standardised amount is the default option, unless the PRIIP has a known required investment amount and price which can be used instead?*

<ESMA\_QUESTION\_PRIIPS\_2>

Fine-tuning or detailing the assumptions in the regulatory technical standards (RTS) at EU level (such as setting the initial amount invested) might prove to be very difficult notably because of (1) the different spectrums of products available in different markets and (2) the differences in investment behaviour and capital at expense across the EU.

Setting similar assumptions for all products would most likely result in retail investors not receiving relevant information and certain products outperforming others based on the KID although they might not be the best fit for all retail investors. As such, it is important that the level II measures do not result in information that might be confusing or even misleading to retail investors.<ESMA\_QUESTION\_PRIIPS\_2>

***Question 3***

*For PRIIPs that fall into category II and for which the Cornish Fisher expansion is used as a methodology to compute the VaR equivalent Volatility do you think a bootstrapping approach should be used instead? Please explain the reasons for your opinion?*

<ESMA\_QUESTION\_PRIIPS\_3>

The methodology under category III (involving bootstrapping and a minimum of 10.000 forward-looking simulations) is much more complicated than the one under category II (historical volatility over the last 5 years). Instead of applying an excessively complex methodology to category II as well, the methodology behind category III products should be simplified

We do not share the current approach for which PRIIPs where the investor may lose more than the money invested (i.e. creating additional payment liabilities) and other types of PRIIPs with high volatility are categorised into the same Class-7 MRM. This would create the perception for retail investors that potentially losing much of your invested money is equally as risky as investing into a PRIIP that creates additional payment liabilities beyond the initially invested amount. A possible solution could be a creation of a new Class-8 MRM exclusively for PRIIPs where the maximum loss can exceed the money initially invested.<ESMA\_QUESTION\_PRIIPS\_3>

***Question 4***

*Would you favour a different confidence interval to compute the VaR? If so, please explain which confidence interval you would use and state your reasons why.*

<ESMA\_QUESTION\_PRIIPS\_4>

The confidence level should be increased to 99% in order to achieve alignment across existing tested risk measurement requirements applicable to PRIIPS products as in the case of Value at Risk calculation requirements for UCITS funds.

<ESMA\_QUESTION\_PRIIPS\_4>

***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?*

<ESMA\_QUESTION\_PRIIPS\_5>

The existence of a guarantee scheme changes without any doubt the level of risk as it reduces the losses for customers.

National guarantee schemes can be an important component of the credit risk profile and hence these cannot be ignored in the CRM. A reference under the section “What happens if [the name of the PRIIP manufacturer] is unable to pay out?” could not sufficient.

Not considering guarantee schemes as a mitigating factor could contradict previous views of the ESA, where it is stated that “credit risk could be mitigated in some situations such as when there is a guarantee or a compensation scheme (such as the deposit compensation scheme) in place or when appropriate collateral is provided". The credit risk retail investors could be facing, when purchasing a PRIIP, is the risk linked to a PRIIP manufacturer’s insolvency. If this risk is already mitigated by a guarantee scheme, then it becomes immaterial for the retail investor. Therefore, if the PRIIP manufacturer is secured through a guarantee scheme, then, the credit risk from the point of view of retail investor, is immaterial and the PRIIP should be categorised CR1.

<ESMA\_QUESTION\_PRIIPS\_5>

***Question 6***

*Would you favour PRIIP manufacturers having the option to voluntarily increase the disclosed SRI? In which circumstances? Would such an approach entail unintended consequences?*

<ESMA\_QUESTION\_PRIIPS\_6>

The main purpose of KID for PRIIPs is comparability, so the result of the methodology proposed should be respected. The principal consequence of voluntary increase of the result would be the hamper of the level playing field and proper comparison of similar products between banks.

<ESMA\_QUESTION\_PRIIPS\_6>

***Question 7***

*Do you agree with an adjustment of the credit risk for the tenor, and how would you propose to make such an adjustment?*

<ESMA\_QUESTION\_PRIIPS\_7>

No. It doesn´t seem appropriate in order to avoid complexity to discriminate further with an adjustment of the credit risk to take into account the applicable tenor.

However, we believe the credit risk scale should also contain seven risk classes to coincide with the market risk scale. This should allow aggregation that is less biased towards market risk as currently proposed.<ESMA\_QUESTION\_PRIIPS\_7>

***Question 8***

*Do you agree with the scales of the classes MRM, CRM and SRI? If not, please specify your alternative proposal and include your reasoning.*

<ESMA\_QUESTION\_PRIIPS\_8>

Regarding MRM indicator:

- The criteria in Category I “up to 5 years, seems an artificial barrier, as explained in Q9.

- The general comment regarding derivatives for hedging purposes, done in the “Introduction” is especially relevant here.

Regarding CRM

In spite of the EU initiatives in progress to reduce the overreliance on credit ratings issued by credit rating agencies, it is surprising to see that the proposal considers that no suitable methodology other that the external rating has been found regarding credit risk assessment.

It should be reminded that hundreds of entities, especially insurance-based investment products manufacturers, don´t have a credit rating issued by a credit rating agency (CRA). It should also be reminded that the cost of getting a rating by a credit rating agency is very high, especially for small and medium insurance undertakings, something that could distort competition. In this regard, we believe that in relation to the credit risk assessment section, in addition to the credit assessment of the obligor made by a CRA, it should be included the possibility of the credit assessment by the PRIIP manufacturer, either, using appropriate methodologies for this purpose and taking into account the standard market indicators or parameters, or alternatively, in accordance with their internal models provided that the relevant internal model has been validated by an independent third party.

The proposal provides that if an insurer doesn’t have a rating, it will be automatically allocated to CR3. According to the aggregation method proposed, this would mean that even if the insurer has a MR1, its final SRI would be 3. This is not a reasonable outcome, given that market risk is the most relevant factor for insurance-based investment products. The ESAs’ alternative scale proposed page 9 is already a step in the right direction because the default credit assessment 3 would allocate an insurer to CR2.

Regarding SRI:

A SRI is not the best approach for the analysis of risks. Credit and market risk are not comparable, therefore a separate analysis of both risks is recommended

Nevertheless, if an SRI is to be adopted, an adjustment to the grid is suggested:

A more balanced grid for the SRI (established in paragraph 69, page 44) is suggested eliminating the current leap between CR3 and CR4 for instruments with MR1-MR3 and introducing a differentiation between the CR4 and CR5 categories (that in the current proposal share the same SRI).



<ESMA\_QUESTION\_PRIIPS\_8>

***Question 9***

*Are you of the opinion that for PRIIPs that offer a capital protection during their whole lifespan and can be redeemed against their initial investment at any time over the life of the PRIIP a qualitatively assessment and automatic allocation to MRM class 1 should be permitted?*

*Are you of the opinion that the criteria of the 5 year tenor is relevant, irrespective of the redemption characteristics?*

<ESMA\_QUESTION\_PRIIPS\_9>

The allocation in class 1 for PRIIPS with capital protection during their whole lifespan and can be redeemed against their initial investment at any time over its life seems adequate.

As stated in Q8, the five years tenor criteria seems arbitrary, irrelevant and based on no concrete evidence. A guaranteed product with a maturity of more than five years does not have a higher market risk than a similar product with a shorter tenor. This arbitrary cap, thus, also becomes misleading for retail investors. For PRIIPs that offer a capital protection at maturity, a qualitative assessment and automatic allocation to MRM class 1 should be permitted regardless of their tenor.

The criteria of the 5-year tenor is justified in the document to address inflation concerns. The impact of inflation on the value of the PRIIP should not affect the market risk mainly because inflation is not a risk inherent for PRIIPs but affects all investment products in the same way. In addition, this feature is not included in pre-contractual information disclosure for other products (MiFID and UCITS for instance). This distinction is not helpful, therefore, for retail investors nor does it increase comparability or transparency of products.

<ESMA\_QUESTION\_PRIIPS\_9>

***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?*

<ESMA\_QUESTION\_PRIIPS\_10>

Yes. As explained in Q8, the existence of any type of compensation scheme should be considered.

Taking into account that in accordance to paragraph 54 of the Delegated Regulation draft the credit risk shall not be assessed for AIFs or UCITS, a statement that these AIF and UCITS are automatically categorised as CR1 should be included.

Subordination of claims: insurance claims take precedence over other claims against the insurance undertaking (Solvency II, Article 275(1)(a)). To ensure this, part of the asset of an insurance undertaking serves as security for the claims of the policyholders in case of insurer’s insolvency. Special legal restrictions apply to these assets to ensure that sufficient assets are kept safe in an event of insolvency in order to satisfy the claims of the policyholders. ESAs rightly take subordination of claims as a risk mitigating factor (Annex II, point 66, page 43)<ESMA\_QUESTION\_PRIIPS\_10>

***Question 11***

*Do you think that the look through approach to the assessment of credit risk for a PRIIP packaged into another PRIIP is appropriate?*

<ESMA\_QUESTION\_PRIIPS\_11>

Yes, it seems adequate. However, in paragraph 62, in addition to credit institutions and insurance undertakings, investment firms subject to Regulation 575/2013, of 26 June 2013, on prudential requirements for credit institutions and investment firms, should also benefit for the allocation to credit quality step 3.<ESMA\_QUESTION\_PRIIPS\_11>

***Question 12***

*Do you think the risk indicator should take into account currency risk when there is a difference between the currency of the PRIIP and the national currency of the investor targeted by the PRIIP manufacturer, even though this risk is not intrinsic to the PRIIP itself, but relates to the typical situation of the targeted investor?*

<ESMA\_QUESTION\_PRIIPS\_12>

The fact that a product currency is different from the national currency of the investor does not affect, by itself, nor the credit neither the market risk of the product that is what the KID tries to reflect.

Nonetheless, the currently proposed narrative for PRIIPs will require a separate KID for every country the PRIIP is being marketed into in case it diverges from the retail investor’s currency, which will inhibit cross-border distribution in the EU single market. We propose a more generic statement in element c of Annexes III’s Appendix 1 that should avoid such duplications, but still sufficiently alert the retail investor to the currency risk.

[Where applicable: c] The money you get back is in [insert currency]. If your country has another currency, this means that the value of this product to you also depends on the exchange rate between [currency of product] and the currency of your country.

Currency should be taken into account only, e.g. for structured products, if it can materially alter the value of the guarantee if given in another currency.<ESMA\_QUESTION\_PRIIPS\_12>

***Question 13***

*Are you of the opinion that the current Consultation Paper sufficiently addresses this issue? Do you it is made sufficiently clear that the value of a PRIIP could be significantly less compared to the guaranteed value during the life of the PRIIP? Several alternatives are analysed in the Impact Assessment under policy option 5: do you see any additional analysis for these assessment?*

<ESMA\_QUESTION\_PRIIPS\_13>

The PRIIP Regulation foresees an entire section of the KID for the description of what happens if consumers take out money early (Article 8(3)(g)(iv)). Thus, consumers are informed in this section about what happens when they cash before the end of the recommended holding period. If the same information is included differently in different sections, this would only lead to confusion.<ESMA\_QUESTION\_PRIIPS\_13>

***Question 14***

*Do you agree to use the performance fee, as prescribed in the cost section, as a basis for the calculations in the performance section (i.e. calculate the return of the benchmark for the moderate scenario in such a way that the return generates the performance fee as prescribed in the cost section)? Do you agree the same benchmark return should be used for calculating performance fees for the unfavourable and favourable scenarios, or would you propose another approach, for instance automatically setting the performance fees to zero for the unfavourable scenario? Please justify your proposal.*

<ESMA\_QUESTION\_PRIIPS\_14>

As provided for in Annex VI, para. 9, page 63, the ESAs are considering to use the past performance of the last five years as the benchmark of the moderate scenarios, so such an approach would assume that the past performance of the last five years would always be considered as a moderate scenario which may be not the case. Is for the PRIIPS manufacturer to judge whether the past five year’s performance should be used as a benchmark for any of the unfavourable, moderate or favourable scenarios.<ESMA\_QUESTION\_PRIIPS\_14>

***Question 15***

*Given the number of tables displayed in the KID and the to a degree mixed consumer testing results on whether presentation of performance scenarios as a table or a graph would be most effective, do you think a presentation of the performance scenarios in the form of a graph should be preferred, or both a table and a graph?*

<ESMA\_QUESTION\_PRIIPS\_15>

It is difficult to state that either a table or a graph would per se be more effective to present performance scenarios to a client. However, it seems that a presentation in the form of graph should be preferred to allow easier comparability for retail investors.

The addition of a recommended holding period in itself adds complexity to any performance representation, as in our experience clients experience difficulties in assessing the period during which they are willing or likely to hold an investment. Therefore, this addition might have a larger impact on the ultimate understanding of a client of the representation than the choice for either a table or a graph. Having said that, a graphical presentation would allow retail investor to assess the different holding periods while keeping the performance scenarios as simple as possible, and at that same time being as exhaustive as possible and more intuitive. <ESMA\_QUESTION\_PRIIPS\_15>

***Question 16***

*Do you agree with the scope of the assets mentioned in paragraph 25 of Annex VI on transaction costs for which this methodology is prescribed? If not, what alternative scope would you recommend?*

<ESMA\_QUESTION\_PRIIPS\_16>

In the costs section, alignment with MiFID gets fundamental, bearing in mind that while KID discloses manufactures’ costs, MiFID II is regulating the costs of the firm providing investment services (such as selling the PRIIP). As an example, MiFID II clearly and explicitly excludes market impact from its definition of costs.

Regarding costs in Annex VI: Spread is not a cost. Implying spread is a cost that gives the impression, that it is possible to trade at mid-price. The bid/mid spread is a measure to mitigate credit risk, that the bank would be imposed by the trade, as well as the cost of hedging the position<ESMA\_QUESTION\_PRIIPS\_16>

***Question 17***

*Do you agree with the values of the figures included in this table? If not, which values would you suggest? (please note that this table could as well be included in guidelines, to allow for more flexibility in the revision of the figures)*

<ESMA\_QUESTION\_PRIIPS\_17>

The spread table of page 62 should be part of Level-3 guidelines rather than Level-2 RTS. The reason for this is that market spreads are a reflection of market volatility and do not remain constant for a period of three years. It is crucial that this table is maintained and updated on a constant basis by the ESAs to provide a relatively accurate description of current market spreads.

The importance of this table is further elevated by the fact that market data in order to calculate the “arrival price”, in particular for non-equities, will not be available for a number of years. Thus, PRIIP manufacturers will be forced to use this spread table as no other information is available.<ESMA\_QUESTION\_PRIIPS\_17>

***Question 18***

*Do you agree that the monetary values indicated in the first table are a sum of costs over the respective holding periods? Or should the values reflect annualized amounts? If you prefer annualized amounts, which method for annualisation should be used (e.g. arithmetic average or methods that consider discounting effects)?*

<ESMA\_QUESTION\_PRIIPS\_18>

Since some of the products included in PRIIPS Regulation, especially insurance-based investment products have terms that sometimes last over decades, only annualised costs are comparable for different PRIIPs in a consistent, robust and stable way. If the total costs were included, then a product with a longer term would automatically – even if it is cheaper – look more expensive than a product with a shorter term. An option presenting the total costs for the whole investment period would not allow for an effective comparison between, for example, a product with a few months investment period and one characterised by a 35 years investment and would be nothing but misleading for consumers. We believe the arithmetic average method would probably be easier to understand for a retail investors that other methods that consider discounting effects. <ESMA\_QUESTION\_PRIIPS\_18>

***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?*

<ESMA\_QUESTION\_PRIIPS\_19>

In order to achieve meaningful comparisons between products, the biometric risk premium and the investment costs cannot be aggregated in one figure and must be presented in separate sections of the KID.

The PRIIPs Regulation is important to help enhance consumer protection and improve consumer confidence by aiming to improve the transparency and comparability of PRIIPs products. It is, therefore, extremely important that the features of insurance-based investment products are appropriately presented in the key information document.

The ESAs acknowledge that the aggregation of the investment costs and the full biometric risk premium would be inappropriate is welcomed. It is indeed, the insurance sector’s views that, such an aggregation would (1) not seem to be in line with the level 1 PRIIPs Regulation; (2) not be in the interest of consumers who will not be in a position to compare what is comparable; and (3) create an unlevel playing field for insurance-based investment products.

Nevertheless, only if the full biometric risk premium is presented separately, would consumers actually be able to make a meaningful comparisons. Meaningful comparison remains the key objective of the PRIIPs Regulation and the insurance sector considers that only separating the full biometric risk premium from the investment costs could achieve such an objective. If this separation is not made, the consumer will be disadvantaged in several ways, as they would not be in a position to compare what is comparable:

• The cost indicator of an insurance-based investment product will be deceptively higher than that of other PRIIPs, and consumers will not be in a position to compare the investment part of the different products on the market.

• The amount of the insurance premium will not be clearly visible to consumers and this will prevent them from comparing the insurance cover, including the potentially high benefits if the insurance cover payment is granted. It will also allow them to compare the premium with the ones offered through other insurance-based investment products and through pure life insurance products with no investment component.

Therefore, in order to achieve meaningful comparisons between products, these two features cannot be aggregated in one figure and must be presented in separate sections of the KID. Moreover, it is imperative that the ESAs develop Level-3 guidelines in order to allow a common methodology not only among insurance PRIIPs, but also among other PRIIP types.

The ESAs have already pointed out correctly in the previous consultation that a separate risk-rider could as well be offered as separate contract that would not fall under the PRIIPs Regulation and where no investment element would be associated with a risk rider. Therefore, the information on these benefits should not be included in the KID.

Finally, Para. 55(b) allows for profit-sharing mechanisms to be deducted from the costs of an insurance PRIIP. As profit-sharing mechanisms are already part of the performance calculation (see page 52, para. 11(c) in the performance scenarios section), this would allow insurance PRIIPs to add them to the PRIIP’s performance and also deduct them from its costs. Profit-sharing mechanisms should be used either to reduce costs or to increase performance, but not both.<ESMA\_QUESTION\_PRIIPS\_19>

***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?*

<ESMA\_QUESTION\_PRIIPS\_20>

First, it seems key to recall that the level 1 PRIIPs Regulation Article 8(f) introduces in the KID a section on costs which should include “the costs associated with an investment in the PRIIP” – it does not say “costs associated with an investment and biometric protection”. Therefore, separating the full biometric risk premium and the investment cost, as well as being the most transparent and meaningful approach, is also in line with the level 1 text.

Insurance-based investment products comprise an insurance cover, consisting of protection against biometric risks faced by consumers, alongside an investment element. When freely choosing an insurance-based investment product, a consumer is looking for both beneficial investment opportunities and for insurance protection for his or her family against biometric risks. The life insurance part of an insurance-based investment product may offer a number of benefits:

• Protection of surviving dependants: first and foremost, death benefits provide surviving family members with funds allowing them to maintain their living standards. For instance, it can provide funds for college education when the principal income earner is deceased and/or a financial safety net to offset the impact of estate taxes upon the policyholder’s death.

• Income protection: benefits that ensure a stable living income in case the consumer is not able to exercise his profession or work in any capacity, either temporarily or permanently.

• Succession planning: allows a customer to save or invest money for his children or grandchildren while keeping control over the funds and the time of pay-out (eg not automatically after a certain period of time).

• Long-term care: the organisation and delivery of a broad range of services and assistance to people who become limited in their ability to function independently on daily basis over an extended period of time, due to mental and/or physical disability.

• Consistent saving: compared to saving accounts, regular payments of a premium offers the consumer a more disciplined way of saving.

All these benefits are unique to insurance-based investment products and are secured by the payment of the insurance premium (i.e. the price to pay in exchange for these insurance services). A sharp and clear distinction must, therefore, be made between investment costs associated to the insurance-based investment product and the insurance premiums paid. Premiums — which are payments that directly finance the insurance benefits of the products — should never be considered as costs. This is simply because the consumer knowingly receives insurance benefits for these payments and in fact specifically chooses an insurance-based investment product in order to receive these benefits along with investment returns. If the consumer is not interested in receiving additional insurance benefits, he or she would not opt for an insurance-based investment product in the first place. However, if consumers are interested in receiving additional insurance benefits, the presentation of insurance premiums as investment costs would not give them the appropriate and necessary information on the product.

Effective comparison should be ensured for consumers. Meaningful comparison remains the key objective of the PRIIPs Regulation and the insurance sector considers that only separating the full biometric risk premium from the investment costs could achieve such an objective. It is in the interest of the consumer that:

• The biometric risk premium in total is presented in a section separate from the KID cost section

• No part of the insurance biometric risk premium is presented in the cost section of the KID

• To ensure complete transparency, a reference to this could be made in the cost section, such as: "The contributions for additional benefits that are not related to the savings process are presented separately.” Similarly, a reference to this separate section could be made in the performance scenario section, such as: "The additional benefits that are not related to the savings process are presented separately."<ESMA\_QUESTION\_PRIIPS\_20>

***Question 21***

*Given evidence as to the difficulties consumers may have using percentage figures, would you prefer an alternative presentation of the second table, solely using monetary values instead? As with the first table, please also explain what difficulties you think might arise from calculating monetary values, and whether this should be on an annualized basis, and if so, how?*

<ESMA\_QUESTION\_PRIIPS\_21>

An average retail client for investment products should easily understand the use of percentages, so this presentation seems adequate and it would be in line with other existing PRIIP products, as in the case of UCITS KIID.

Taken into account that the costs alienation with rules as required by MiFID II for the packaged retail investment product is essential, the table should include both percentage figures and monetary values (MiFID II requirements where both figures are required).<ESMA\_QUESTION\_PRIIPS\_21>

***Question 22***

*Given the number of tables shown in the KID, do you think a more graphic presentation of the breakout table should be preferred?*

<ESMA\_QUESTION\_PRIIPS\_22>

The example of a graphical breakdown presentation offered on page 14 of the consultation paper adds little in terms of clarity for clients compared to a table and may oversimplify different types of costs and may make it harder to understand the differences between particular types of PRIIPs. It may also not provide the cost breakdown as required by MiFID II. <ESMA\_QUESTION\_PRIIPS\_22>

***Question 23***

*The example presented above includes a possible way of showing the variability of performance fees, by showing the level for all three performance scenarios in the KID, highlighting the ‘moderate‘ scenario, which would be used for the calculation of the total costs. Do you believe that this additional information should be included in the KID?*

<ESMA\_QUESTION\_PRIIPS\_23>

No. If the Kid should be a clear and no long document, the necessary information, but no more that that should be included. The tables included in Annex VII include enough information.<ESMA\_QUESTION\_PRIIPS\_23>

***Question 24***

*To reduce the volume of information, should the first and the second table of Annex VII be combined in one table? Should this be supplemented with a breakdown of costs as suggested in the graphic above?*

<ESMA\_QUESTION\_PRIIPS\_24>

Reducing the volume of information should only be done if there is no lack of clarity and the second table provides clarity on the information included in the first table. Therefore, the combination, if it is the case, should be done in a way that guaranties a better result than the separate tables.<ESMA\_QUESTION\_PRIIPS\_24>

***Question 25***

*In relation to paragraph 68 a) of Annex VI: Shall the RTS specify that for structured products calculations for the cost free scenario have always to be based on an adjustment of the payments by the investor?*

<ESMA\_QUESTION\_PRIIPS\_25>

Yes, the RTS could specify that for structured products, calculations for the cost free scenario have always to be based on an adjustment of the payments by the investor, as investors in structured products often have no possibility to make additional investments after the initial subscription.<ESMA\_QUESTION\_PRIIPS\_25>

***Question 26***

*Regarding the first table of the cost section presented in Annex VII, would you favour a detailed presentation of the different types of costs, as suggested in the Annex, including a split between one-off, recurring and incidental costs? Alternatively, would you favour a shorter presentation of costs showing only the total costs and the RIY?*

<ESMA\_QUESTION\_PRIIPS\_26>

From a distribution angle, a breakdown towards one-off, recurring and incidental costs, cannot unambiguously be supported as the last concept in itself seems hard to explain to the average retail client.

This approach mixes defined and possible costs as well as distribution and product costs. Specifically, as for mentioning distribution costs in a KID, cost information in the KID should be limited to product costs, as distribution costs may vary depending on the party distributing the product. <ESMA\_QUESTION\_PRIIPS\_26>

***Question 27***

*Regarding the second table of the cost section presented in Annex VII, would you favour a presentation of the different types of costs showing RIY figures, as suggested in the Annex, or would you favour a presentation of costs under which each type of costs line would be expressed differently, and not as a RIY figure -expressed as a percentage of the initial invested amount, NAV, etc.?*

<ESMA\_QUESTION\_PRIIPS\_27>

The simplest logic is the preferred route, which in this case means an approach that makes use of as few assumptions as possible. This means expressing costs as a percentage of the initial invested amount is preferred. However, if the RYY (reduction-in-yield) methodology is chosen, then we propose to describe it in a more plain language<ESMA\_QUESTION\_PRIIPS\_27>

***Question 28***

*Do you have any comments on the problem definition provided in the Impact Assessment?*

*Are the policy issues that have been highlighted, in your view, the correct ones? If not, what issues would you highlight?*

*Do you have any views on the identified benefits and costs associated with each policy option?*

*Is there data or evidence on the highlighted impacts that you believe needs to be taken into account?*

*Do you have any views on the possible impacts for providers of underlying investments for multi-option products, and in particular indirect impacts for manufacturers of underlying investments used by these products, including where these manufacturers benefit from the arrangements foreseen until the end of 2019 under Article 32 of the PRIIPs Regulation?*

*Are there significant impacts you are aware of that have not been addressed in the Impact Assessment? Please provide data on their scale and extent as far as possible.*

<ESMA\_QUESTION\_PRIIPS\_28>

The Impact Assessment included in the consultation Paper is considered a very detailed, complete and structured study, and the CNMV Consultative Committee would like to congratulate the ESAs for this excellent work. However, clarifications are still needed and ESAs will also establish further guidelines for this purpose.

Nonetheless, regarding policy issues, two of them are missed:

- The guidance on relaying the KID to the client remains overly general in nature, especially when it comes to situations where there is no physical meeting between the distributor and the client. The criteria mentioned in Article 20 of the draft regulation relate solely to the timing of the delivery of the KID, and do not provide guidance on any of the other practical issues which have risen in the past (and which have proven difficult to resolve), notably the manner in which the KID can be delivered to the customer (bundled with other KIDs on an accessible online location, by means of a hyperlink or as an attachment to electronic communication, etc.).

- Applicability: Further guidelines should be provided to confirm exactly for which products a KID must be in place as of 01 January 2017 e.g. only for new products launched as of 01/01/2017 or products which were launched before 01/01/2017 and where the subscription period is still open? Etc

On the other hand, the exemption granted by Article 32 of the PRIIP KID Regulation for UCITS and the many other nationally regulated retail funds that produce the UCITS KIID should not be undermined by conflicting rules applicable to other PRIIP providers. The unsatisfactory situation presented on page 123 of the Consultation Paper (first bullet point under the section MOPs Costs) should be taken into account with high priority by the legislator before the new rules are finalised. As drafted, the MOP rules would require a very large number of investment funds to produce both a UCITS KIID and information for a PRIIP KID, at least until 31 December 2019. This would also undermine the review by the Commission pursuant to Article 33 of the PRIIP KID Regulation. Moreover, and very importantly, it would result in confusing information for investors, with the core features of risk, performance and costs presented differently in the two documents.

We deem it questionable whether such outcome was envisaged by the EU legislators or even is covered by the Level 1 text. Article 6(3) of the PRIIP KID Regulation stipulates that in the case of MOPs “the key information document shall provide at least a generic description of the underlying investment options and state where and how more detailed pre-contractual information documentation relating to the investment products backing the underlying investment options can be found.” In our view, this wording does not imply provision of a PRIIP KID for each of the underlying investment option. On the contrary, when combined with Article 32 it should be read as allowing the provision of the UCITS KIID as pre-contractual information on any UCITS or AIF benefitting from the exemption under Article 32.<ESMA\_QUESTION\_PRIIPS\_28>