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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>

We welcome this further opportunity to comment on the ESAs’ Joint Consultation paper on Draft Regulatory Technical Standards (RTS) for the PRIIPs Key Information Documents (KIDs). We agree with the overall goal to ensure risks, investment performance and costs are covered within the KID across the multitude of products in a way that provides transparency to assist retail investors to make the right investment decision. Before answering the specific questions raised for consultation purposes, we would like to highlight some further aspects of relevance for the overall PRIIPs framework and raise some serious implementation challenges.

Developing the methodology underpinning the presentation of risk and reward and the calculation of costs is technically very challenging, as shown by the ongoing contentious discussions among both the industry and the ESA members. Therefore, we provide detailed comments hereafter to help ensure consumers are able to make the best possible investment decisions.

Please do not hesitate to get in touch if you want to discuss the contents of this response in more detail.

**Some general comments in relation to KIDs design**

The proposed mixed qualitative and quantitative approach for the determination of the **risk class** is problematic. As a first step, products are qualitatively assigned to different risk categories which prevent individual financial products being compared against each other and an overall consistent risk classification. Moreover, the product scope for this qualitative distribution (Category I or Category V PRIIPs) has neither been defined clearly for all product types; in particular, there would have to be a clear statement that the term "derivatives that qualify as a PRIIP" used here, does not include (structured) transferable securities. The quantitative approach then applying - for most products - on the second level largely follows the methodology currently in place for the calculation of the SRRI shown in UCITS KIIDs, which was not amongst the approaches favored by the Expert Group.

The methodology to compute the risk indicator for structured product as a VaR Equivalent Volatility (Category III PRIIPs, p.38 to 40: § 30 to 52) refers to a principal component analysis (PCA) for curves, but the benefits of such PCA are unclear. References to a PCA should be deleted as we believe the VaR should be simply computed with the actual market parameters and model used to price (and hedge) the product. Using the manufacturer’s market data and model to compute the VaR of structured product falling under PRIIP Category III, is the only way to ensure consistency between market data and a forward-looking risk indicator.

For structured products, while the methodology refers to the SRRI, we note a significant difference in the model used to compute the VaR. The UCITS SRII model is based on Black Scholes while the PRIIPS proposal is a bootstrap of historical returns. This proposed computation method is operationally complex and does not seem to bring a clear advantage over its UCITS equivalent. As a consequence, we would recommend using a Black Scholes model.

Moreover, the scaling within this methodology seems to have been taken over from the SRRI approach. For UCITS, this methodology meant that practically all equity funds were assigned to the highest or second highest of the seven risk categories. Extending this approach to all equity-based PRIIPs would mean to create a highly distortional effect in the form of unjustified discrimination of equity underlyings. Ultimately, such application of the risk indicator would create a judgment bias at the retail point of sale triggering an abstention from distributing equity-linked products (lacking selling effort of the distributor and a diminished interest of the investor). Such an effect seems contradictory to the ideas underlying the recently launched Capital Markets Union (CMU) concept which is meant to encourage equity investment by private households so to foster long-term capital accumulation, i.e. for retirement planning, next to improving market-based finance for corporates.

The MRM calculation formula for category II PRIIPs(esp. § 20 to 52 of Annex II) has been already rectified twice after the publication of the consultation paper leading to confusion and hampering the assessment of the proposed formulas, since their application seems to produce different results. It should be avoided to endorse potentially incorrect calculation methodologies in an EU Delegated Regulation.

The approach proposed in the Consultation Paper requires the **performance scenarios** primarily to be based on the "recommended holding period" - e.g. "five years" - which, for products with a fixed maturity date, would often not correspond to the latter. This would mean that the scenarios would, in the absence of payouts under the products before their maturity dates, have to be calculated based on exchange (or OTC) prices. In addition, two other scenarios would have to be displayed for shorter “interim holding periods”. For structured securities, scenarios on this basis would be highly problematic from a methodological perspective. Figures calculated on this basis would not provide reliable statements about the expected return of a product. Instead we would suggest that, for products with fixed maturity dates, only one performance analysis should be required with reference to such maturity date.

Generally three performance scenarios would be required. However, different to the practice for certain national law product information documents (e.g. the German PIB), the middle scenario would be called "moderate" and would have to be calculated based on the expected return. This approach could mislead investors to expect the realisation of that scenario with a high degree of certainty. A better way would be to allow that the "moderate" scenario can be set freely according to reasonable discretion of the issuer, or to turn this into a "neutral" scenario. In addition, it should be possible to include more scenarios, if the structure and functioning of the product cannot be fully captured by three scenarios.

Regarding **Closed-end Alternative Investment Funds (AIF**) and the methodology underpinning the market risk (Annex II) clarification is needed as to whether performance scenarios under the draft RTS for PRIIPs (Art. 6) are the same as scenario analysis in the case of MIFID2 Technical Advice 2.7,§12. It is indeed not clear whether closed-end AIF fall into **Category II** or **Category III** or **Category V**.

In **Category II,** AIF are mentioned explicitly and can thus be assigned to this Category II (page 35, §10a). The following additional conditions in this paragraph are also applicable:

*- where these PRIIPs have, either directly or on a synthetic basis, a delta one or a leveraged exposure on underlying asset(s) that pays a constant multiple of a market price or index, and*

*- where at least 2 years of historical daily prices or 4 years of historical weekly prices are available, or, in the case where such minimum data are not available, where a natural benchmark or proxy exists (e.g. recently created ETF on a liquid market index), such that the data of this benchmark or proxy shall be used, on a complementary basis, in the calculation of the market risk.*

For closed-end AIF such a proxy would be indices for unlisted real estate and infrastructure funds.

In **Category V** closed-end investment funds are mentioned that invest at least 30% of their assets in illiquid assets, which is also applicable for closed-end AIF (page 36, paragraph 13b, (i)).

Finally, in Annex II, §15, it is mentioned that AIF not falling under Category II should be classified under **Category III.**

If closed-end AIF fall into Category II, it is not clear how to calculate annualized volatility, on which basis the risk class is assigned (page 38). The procedure described in the consultation paper (page 37) is applicable for daily prices, but proxies for such products are usually rated quarterly. When calculating the volatility for a common index like the NCREIF (National Council of Real Estate Investment Fiduciaries) using number of quartals instead of the number of days, the results is a negative VaR-equivalent volatility which would not correspond to the aim of this regulation.

In Annex II,§29 the VaR is dedicated to MRM classes. Calculating the VaR with the mentioned index NCREIF the MRM class would be MRM class I (see also encl sheet: the calculation of VaR and VEV for Illiquids and <http://www.ncreif.org/>)

On the future **Guidelines on performance scenarios** (Article 6(7) of the draft RTS), the ESAs so far neither made no clear commitment as to the timing of these guidelines covering the assumptions underlying the choice of scenarios by PRIIPs manufacturers. If these guidelines are agreed on too late for the first round of KID production the relevant IT processes and systems would need to be modified shortly after their first configuration, involving additional costs.

The proposed calculation methodology for **transaction costs** (esp. § 14 to 28 of Annex VI - see also response to Q16 and 17): does not work for fixed-income transactions for which no reference prices are available. The only feasible solution would be calculation of transaction costs based on a standardised table which should be flexible enough in order to accommodate any changes in market conditions which impact the average costs of a transaction. In the longer term MiFID2 might remedy this situation due to the new requirements for pre-trade transparency that would become applicable to fixed-income instruments.

Detailed specifications on the **product scope** of the Regulation are also needed. In Annex II, Part 1, 9(c) it is highlighted that all **derivatives** as defined in MiFID II are in the scope. There is however 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 will be misleading, as the purpose of the hedging strategy is to obtain exactly the opposite result of the derivative as a stand-alone investment. In this case also a number of outstanding issues so far not addressed in the RTS must be clarified. The question arises at what level a KID must be produced as for derivatives there is no Unique Identifier Product (UPI). In order to provide legal certainty, it should be clarified in the recitals that the Regulation applies to the product, so as to ensure that no KID must be established for individual contracts which would simply be impossible for manufacturers.

The absence any of **grandfathering rules** at level 1 is a problem for the outstanding stock of products on offer and we would recommend foreseeing at least a transitional period of12 month. Industry will need to update KIDs esp. those for “continuously available products" (updating every 12month or when SRI changes or a material change occurs). It is also yet unclear whether we need to update when an investor redeems its PRIIPs.

Some questions not covered in the current draft RTS will also require rapid regulatory answers such as e. g. the **determination of competent authorities** in case of cross-border scenarios. It should be avoided that a KID accepted in one EU Member State would need to be further adapted if the same product is marketed in another Member State.

More detailed rules are also needed for the scenarios covered by Art.13.3 (case where KID may be provided after conclusion of the transaction) and Art.13.4 (successive transactions regarding the same PRIIP carried out on behalf of a retail investor in accordance with his instructions given prior to the first transaction) of the PRIIPs Regulation.

<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>

 We see merit in clarifying the criteria set out in recital 18 of the Level 1 text. Since the PRIIPs KID is meant to constitute a common standard for key information and, subject to its translation, shall be universally applicable throughout the EU, it is important that the circumstances under which a comprehension alert needs to be included are consistently interpreted across the Member States. As mentioned in our introductory remarks, for PRIIP manufacturers it is essential that all RTS or other guidelines are issued and published in final form 9 months at the latest before the PRIIPs Regulation becomes applicable .<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>

In order to allow investors to calculate the impact of cost information on their individual amount, a multiple of 10 has in any case to be used. We agree with assuming EUR 1,000 as the standard investment amount. This solution represents a fair compromise between average lump sum investments which tend to be rather higher and saving plans which generally involve lower instalment payments. It also has the advantage of being easily multipliable/ dividable in order to generate more personalised figures at the point of sale. Moreover, we deem it appropriate to treat the prescribed standardised amount as a default option while allowing the use of different figures in case of PRIIPs with a required investment amount or price which is known in advance. The investment amounts have to be aligned across all types of PRIIPs. The differentiation between investment funds and insurance based products for instance is not needed and is not in line with the aim of comparability<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>

In general, we support the overall aim of the Regulation to achieve comparability among all PRIIPs. The existence of different methodologies for different PRIIP categories is clearly contrary to this aim, so we strongly support a harmonization of methodologies. Referring to the comparison between Cornish Fisher and the bootstrapping approach, our calculations so far indicate similar but not equal results, so we could accept the usage of the Cornish Fisher approach.<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>

As the VaR level only serves as a basis to calculate the VEV, the confidence interval is of low importance. More important is the prescribed methodology for calculating the VaR itself. Due to the fact that different holding periods are taken into account, comparable results cannot be achieved. Furthermore, the proposed methodology enables regulatory arbitrage, for instance in the case of products with a protection feature / barrier. Only small adjustments in barrier levels can have huge impacts on the summary risk indicator. The confidence level here has an impact on the threshold value for the barrier in order to “produce” low risk indicators, but this methodological problem cannot be solved with an adjustment of the confidence level.

We support the DDV proposals re. new volatility thresholds for the Market Risk measure as they would prevent that e.g. medium risk equity products are automatically falling in the highest baskets 6 and 7 just because their volatility is above the currently proposed threshold of 25% <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>

 Due to the existence of different amounts repayable per person in most compensation or guarantee schemes at national level, we would recommend not taking into account such guarantees in the credit risk assessment of the PRIIPs. We would rather mention the existence of such schemes in the KID section *‘What happens if [the name of the PRIIP manufacturer] is unable to pay out?* <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>

We would not favour PRIIP manufacturers having the option to voluntarily increase the disclosed SRI since it would not be transparent to investors why this discretionary manipulation of the SRI is taking place. A qualitative warning would be more transparent <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>

The intention of this question seems to be unclear to us. Compared to UCITS, indeed credit risk applies for the determination of the risk of the PRIIP. However, the tenor will also influence the market risk of the PRIIP so we see no real justification for adding another adjustment for tenor in the credit risk.<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>

The scale for Market Risk Measure (MRM) 1-7 looks reasonable. However, we do not consider the assignation of the product Categories I-V to the Market Risk Measure (MRM) to be feasible.

Since there has to be a difference between derivatives (F&O, swaps, forwards,...) and securities (mutual funds, certificates,..) the scale for Category II - V products has to stop at MRM 5, leaving:

* MRM 6 for products with a significant total loss potential (long positions in options, derivatives with leveraged downside)
* MRM 7 for products with a loss potential being higher than the initially invested amount.

Otherwise, an equity fund may get the same MRM7 as a future on a single stock, which is clearly misleading. In general, the scale does not offer much difference between higher risk products.

In addition, we would recommend to change for CR3 and MR1&2 from 3 to SRI class 2 in the table. A capital protected product issued or guaranteed by an investment grade institution should be class 2 for short maturities. The strong difference in default rates between Investment Grade and non Investment Grade issuers should be accentuated here. The longer tenor products will see their risk adjusted through the market risk.

Concerning the MRM of **category V** PRIIPs (§12, 13 of Annex II) we strongly disagree with the proposal in § 12 and 14 of Annex II to consider the illiquid nature of the underlying assets as criteria for the MRM of category V PRIIPs. It is essential to ensure that the determination of market risks is without reference to liquidity risk. According to the general proposal in the consultation paper, liquidity risks shall not be part of the overall summery risk indicator (SRI) but shall instead be explained in the narrative part and a warning to the liquidity effect shall be added in the presentation of the SRI (Art. 5 (3) of the draft RTS). Considering the illiquid nature of the underlying assets as criteria for the MRM of category V PRIIPs would be incompatible with the system of the clear distinction between liquidity and market risks. In particular, retail funds which invest more than 50 % of their portfolios in illiquid assets such as German open-ended real estate funds would be assigned disproportionately high risk with the proposed MRM class 4 as category V PRIIPs. Therefore the reference to the illiquid nature of the underlying asset in paragraph 12 of Annex II and the examples described in §14 (ii) and (iii) of Annex II should be deleted.

If it is decided not to go down this route, as a minimum it must be clarified that funds investing in illiquid assets are allowed (or required) to calculate their MRM figures according to the methodology under class II or III if they have sufficient price data for performing such calculations. New funds which anticipate obtaining the relevant data during their lifetime should be able to make provisional MRM calculations with reference to a benchmark or proxy such as an existing fund with a comparable investment strategy as it is foreseen for category II PRIIPs.

We therefore suggest changing § 13 (a)(i) of Annex II as follows:

*“13. For These Category V PRIIPs the MRM class is determined as follows:*

*(a) Insufficient Data*

*i. When historical data is lacking but a ~~natural~~ benchmark or a proxy* ***such as a PRIIP with a comparable investment strategy*** *exists, such benchmark or proxy shall be used, subject to relevant documentation; …”*

An equivalent supplement should be included in the wording of § 10, last subparagraph, of Annex II.

With regard to § 13 of Annex II, we propose to add **“mixed funds”** as another special PRIIP type with a MRM class of “4” in the table. Otherwise this type of funds would be categorised as “all other funds” with a MRM class of 6 although its overall market risk is generally derived from a mixed bond and equity portfolio with varying weightings and the admixture of other assets, and thus should be significantly lower in comparison with other PRIIPs with a MRM class of 6 (such as structured PRIIPs). Mixed funds are retail AIFs established in different forms in several Member States which invest in other investment funds units and/or in assets in which UCITS invest (with the same restrictions as required under the UCITS Directive). According to the current experiences with the synthetic risk and reward indicator (SRRI) for UCITS which also applies for mixed retail funds in Germany, mixed funds are categorised with an average SRRI of “4”.

Regarding MRM for **category II** PRIIPs and volatility table *(§* 29 of Annex II) we suggest modifying the proposed volatility table. This table is identical with the volatility table presented for the computation of the SRRI for UCITS which has been very controversially debated from its very inception. It is important to review these volatility buckets bearing in mind that the universe of PRIIPs has been considerably extended in comparison to the range of UCITS and should allow for better discrimination of products. Moreover, the buckets are incapable of addressing all market conditions (e.g. there is no consideration of changed yield curves). The buckets are only based on a five-years-volatility which does not allow any other information about time horizon. However, volatility is only a figure which describes on the basis of estimations how past returns are shared. Depending on certain conditions, the estimation procedures may vary. These aspects are not considered in the volatility table. Moreover, the volatility (also on the basis of the five-year-volatility) could be subject to large fluctuation depending on the certain market conditions (e.g. very high or very low volatility). Based on these practical experiences, we suggest increasing the level of volatility for MRM class 7 to 30% and to adjust the preceding buckets accordingly.

As to credit risk classes and the table in § 68 of Annex II showing various credit rating scales used by a number of Credit Rating Agencies (ECAIs), we propose referring to the new rating scales defined in the proposed Final Draft ITS of ECAIs’ Mapping. The rating table presented in the consultation paper seems to deviate from the relevant ESAs proposals. <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>

This approach is right for all investors investing at inception at 100% of the nominal. In case the investor invests later through the secondary market he may get the product at e.g. 120% of the nominal since market performance may increase the value of the product.

This investor does not feel 100% capital protection but a partial protection. Therefore, for the MRM there should be a difference between primary and secondary market.

We would recommend bringing the criteria of 5 years to 8 years. The most important criteria for retail clients is the capital protection and the quality of the issuer or guarantor. The tenor is captured in MiFID through the investment horizon. If the 5 year is kept, products with capital guarantee and without will have too similar risk attributed where for retail clients they have very different objectives and behavior.<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>

Only the credit risk mitigating factors such as those described in § 65 of Annex II should be taken into account in the credit risk assessment of the PRIIP.<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>

Annex II § 55 c) should be deleted as it would mean that in case of a certificate on an established stock market index (such as the German DAX), the credit assessment should include all companies being covered by the index. Since credit risk of those companies is not relevant (barely measurable), the logic should be that as long as the payout is linked to performance, the credit risk of the underlying should not have any impact. <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 currency risk is indeed varying depending on the home currency of the investor. However, since the PRIIP KID should be the same in all countries it is not possible to have a general integration of the currency risk into the SRI calculation. Rather, a general disclaimer could be added giving investors an indication that he should be clear about the currency of his investment and that he should be aware of that there could be currency risk in case the currency of the products would be different from his home 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>

We do not consider this issue to be sufficiently addressed, please also refer to our answer to question 9 (re. PRIIPS offering a capital protection during their whole lifespan). These products could be treated the same way as Category III products.

The SRI should clearly indicate that it is computed on the assumption that the investor keeps the PRIIP until maturity, and therefore that it does not cover the risk associated with early redemptions by investors or secondary market transactions. A warning should be required for capital guaranteed PRIIPs, stating that the value of the PRIIP could be significantly lower than the guaranteed value during the life of the PRIIP due to market and liquidity risk and the corresponding fluctuations of market prices

<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>

The proposed use of the performance fee figures as displayed in the cost section is not appropriate as a basis for the relevant calculations of the moderate scenario. For investment funds charging performance fees this approach will effectively result in the past performance of the preceding five years being presented as a moderate performance option. For example, if a fund substantially outperformed its benchmark in the past five years, this outperformance would now be considered as the normally expected return under the moderate scenario. Moreover, the corresponding favourable scenario should assume an even stronger outperformance which would be even more peculiar. The unfavourable scenario would then need to be construed alongside performance prospects which should more or less mirror the favourable scenario on the negative side.

Since performance scenarios are meant to illustrate not only the effects of performance fees, but more generally the possible return achievable in a PRIIP in different market conditions, it appears too short-sighted to make the choice of relevant scenarios entirely dependent on the past results in terms of performance fees.

Rather, it should be up to the discretion of the product provider whether the previous performance results which generated the performance fee are presented as a moderate or a favourable scenario depending on the extent of the achieved outperformance and the underlying development of the markets. Fund providers should also have the discretion to assume different benchmark returns for different scenarios in order to avoid overly positive performance presentation in case of outstanding market performance in the preceding years.For instance, under the approach proposed by the ESAs, equity funds which succeeded to beat their respective benchmark would have been required to make assumptions on their performance on the basis of very positive market developments in the years 2003-2007, even though the market prospects have changed and the responsible fund managers would have known that past performance figures will not be even remotely achievable in the near future. In this case, and assuming that other funds would follow the general line of illustrating performance on the basis of reasonable and conservative assumptions about future market conditions, it might even be that the ESAs would have created an unjustified bias in favour of funds charging performance fees by requiring excessively positive performance presentation on the basis of historical data.

In any event, the approach presuming that the return of the benchmark will remain stable for all scenarios should be clearly limited to events where a benchmark is being used as a determinant for performance fee calculation. Such assumption implies that a fund is able to generate performance which is detached from the relevant market developments which is certainly not true in every case.

Beyond the issue of performance fees, we have some further comments relating to the construction of performance scenarios:

Treatment of illiquid products according to Annex V, § 5: We strongly oppose to the suggestion of exempting products which are considered as illiquid for the purpose of risk presentation from the duty to illustrate possible performance for interim holding periods. The liquidity warning in the SRI context pertains to a broad range of products, including those applying significant penalties for early exit, featuring long disinvestment periods or discretionary redemption prices, or even products with liquidity profiles not matching their underlying assets (cf. Annex II § 76 d) and e)). In these cases, investors have the general possibility of withdrawing from their investments before maturity, but mostly at the price of disproportionately high costs many of them do not expect. Presentation of possible performance outcomes net of costs at intermediate points of time would allow investors to take notice of these consequences of early withdrawal and to assess their impact on performance before an investment decision has been made and thus must be deemed an indispensable element of the PRIIPs KID for all products for which interim disinvestment opportunities exist. Only in cases in which the possibilities to redeem or dispose of an investment are expected to be very limited during the entire lifetime of a PRIIPs, presentation of interim performance results might be dispensed with as possibly creating false expectations for investors.

Accounting for future profit participation (Annex IV § 11): We agree with ESA’s stance that profit participation which is subject to a fully discretionary decision of the manufacturer shall not be taken into account in either risk, performance or cost calculations. For the sake of clarity, we think it helpful to reflect this limitation in the text of §11 a) (e.g. by stating that *“future profit participation shall be taken into account****, provided that it does not depend on a fully discretionary decision of the manufacturer***”). Furthermore, profit participation which is reflected in the simulated future performance cannot be additionally taken into account as a discount on costs (see Q19).

ESAs’ Guidelines on performance scenarios under Article 6(7) of the draft RTS: We share the ESAs’ view that it will be helpful to further harmonise the approach to selecting scenarios for the performance presentation. However, prospective guidelines on the assumptions underlying the choice of scenarios by PRIIPs manufacturers entail significant problems in terms of timing. With the pending guidelines for which no definite time commitment has been made, the operational implementation will become even more challenging. In any case, it should be avoided that the guidelines be agreed on too late for the first round of KID production which would mean that the relevant IT processes and systems would need to be modified shortly after their first configuration, thus involving additional costs.

<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>

Based on our experience with the German KID (PIBs) we have a preference for performance presentation in form of a table which works in all cases. For example, in case of products with a defined payout profile it should be possible to show the impact of the underlying on the payout at maturity and showing a path would not add much value.

<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>

We have considerable objections to the methodology for calculation of transaction costs as proposed in § 8 &ff. of Annex VI. This methodology, while being extremely complex and expensive in terms of implementation, is not feasible for transactions without multilateral trading opportunities, in particular for fixed-income trades. It is not feasible to calculate transaction costs for fixed-income trades on the basis of the proposed methodology due to the lack of reference data for establishing the relevant arrival prices. Since the arrival price shall reflect the mid-market price at the time the order to transact is initiated, the calculation of the arrival price necessarily implies availability of the relevant data on market prices.

In the fixed-income market, however, market prices are not yet transparent. A few data vendors such as Bloomberg publish indicative quotes for fixed-income instruments which, however, do not represent real trading quotes since brokers are under no obligation to keep the information up to date. Hence calculations on the basis of such indicative prices will always entail faults which will be more or less significant depending on the timelines of the available quotes, and in any case, are not capable of establishing real transaction costs for fixed-income trades.

In addition, the approach to determining the relevant arrival price as proposed in § 16 of Annex VI creates significant arbitrage opportunities for calculating transaction costs, thus increasing its susceptibility to errors. Specifically, calculations on the basis of market prices known before the initiation of an order may be used in order to push down transaction costs in case of an anticipated price decrease, possibly based on market developments after the last available quote. Even indicative quotes for some fixed-income products are often not updated for several hours, or even days, due to the low level of relevant trading activities.

MiFID2 might remedy this situation in the longer term due to the new requirements for pre-trade trans-parency applicable to fixed-income instruments. However, with the probable postponement of MiFID2 entry into force, it is clear that the necessary data will not become available in time for the implementation of the PRIIPs KID requirements. Even without a formal postponement of MiFID2I, from a today’s perspective it is difficult to assess whether the new pre-trade transparency regime will result in the effective access to market prices or whether the current market fragmentation will prevent such data consolidation and availability for the buy-side. It is thus too early to expect fund managers to make calculations on the basis of data which the market is yet to deliver.

The proposed calculation methodology will anyway not be practicable at the time of the entry into force of the PRIIPs Regulation as it foresees calculation of average transaction costs on the basis of transactions incurred over the previous three years. This means that at the time of the first production of PRIIPs KIDs, i.e. December 2016, fund providers would need to calculate transaction costs by referring back to the data from December 2013 onwards. Even when applying the methodology to the indicative prices available in the market, basically no fund will be able to retrace the relevant data history. The proposed calculation methodology will become workable only in December 2019 at the earliest.

Since this date even exceeds the review timeline for the PRIIPs Regulation (Art. 33) by one year, we suggest postponing the decision about introducing such a sophisticated calculation methodology for transaction costs to the scheduled review process. The feasibility of the proposed calculations should then be appraised in light of the availability of data for the fixed-income markets after the first experiences with the MiFID2 transparency regime. This would allow regulators to make evidence-based decisions instead of inventing new standards lacking the compulsory base of market data. In the meantime, ESAs should revive the hybrid approach to the calculation of transaction costs which has been favoured in the previous round of consultation. Under this approach, implicit transaction costs embedded in fixed-income prices should be calculated by reference to a standardised table established by the ESAs for which we make further suggestions below.

Furthermore, and regardless of which method for computation will eventually be chosen, the ESAs should make it clear that transaction costs incurred in other PRIIPs than investment funds should also be calculated and disclosed according to the relevant methodology. This pertains in particular to insurance-based investment products which under the current wording are only generally required to account for costs for the management of insurance cover - such costs also need to include the relevant transaction costs.

<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>

Since the calculation methodology proposed in § 8 &ff. of Annex VI does not work for a major part of the market, specifically not for fixed-income transactions, we recommend reviving the hybrid approach to the calculation of transaction costs which has been favoured in the previous round of consultation.. Under this approach, implicit transaction costs incurred in any fund should be established by reference to a centrally designed table. This standardised way of calculation should apply in the first place to fixed-income transactions in government and corporate bonds.

ESMA should be best equipped to set up and maintain such standardised transaction cost measures in view of the transaction data to be collected and processed for MiFID II purposes. In the recent debate on the possible postponement of MiFID II, ESMA explained that it is currently running a project called FIRDS for centralising the collection of reference data which entails direct connections to around 100 trading venues and collection of data on more than 15 million instruments. The FIRDS project is also meant to apply to collecting and consolidating transaction data for the purpose of determining the liquidity status of a financial instrument. This extensive data collection exercise also should be utilised in order to establish average transaction cost of financial instruments, including fixed-income products, in the MiFID II environment. However, being aware that the complexity of FIRDS is one of the main reasons for the probable MiFID II delay and will not allow for operational readiness before mid 2017, it is likely that a temporary solution needs to be found even in case that the entry into force of the PRIIPs Regulation will be aligned with the new MiFID II timeline. Such temporary solution could involve a table based on reasonable estimations of relevant transaction costs.

The table suggested in Annex VI § 25 could be used for standardised calculations of transaction costs subject to a few adjustments as specified below. Given the anticipated evolvement of transaction data transparency, the table should not be legally enshrined as part of the RTS, but should be adopted as a Level 3 measure in order to allow for more flexibility and smooth adaptation of the standardised values in line with potential new insights from market data.

Regarding the specific table design, we would suggest distinguishing between implicit and explicit costs and including a further column to accommodate the latter. Trading costs in equity instruments and listed derivatives should then be classified as explicit costs. In these terms, we would recommend distinguishing between program and no program trading also in terms of emerging market shares and assuming the explicit costs of listed derivative transaction in absolute numbers in order to reflect the prevailing market practice.

The adjusted table would then look as follows (the newly inserted values correspond to our market experience):

|  |  |  |  |
| --- | --- | --- | --- |
| **Asset Classes**  | **Sub Asset Classes** | **Implicit Cost % (Bps)** | **Explicit Cost % (BPS)** |
| Liquidity  | Money market instruments (for the sake of clarity, money markets funds not included)  |  1 |  |
| Government bonds | Government bonds and similar instruments developed market rating AAA-A  |  5 |  |
|  |  Government bonds and similar instrumentsdeveloped market different rating below A  |  8 |  |
| Government bonds emerging markets (hard and soft currency)  | Government bonds emerging markets (hard and soft currency)  |  50 |  |
| Investment grade corporate bonds | Investment grade corporate bonds |  25 |  |
| High yield corporate bonds (worldwide)  | High yield corporate bonds |  50 |  |
| Shares developed markets  | Shares developed markets  |  | Program trading: 4; no program trading: 15;  |
| Shares emerging markets  | Shares emerging markets  |  | Program trading: 4; no program trading: 25;  |
| Listed derivatives | Listed derivatives |  | 0,50 Euro per contract |
| OTC | OTC Exotic options |  70 |  |
|  | OTC Plain vanilla options |  20 |  |
|  | OTC IRS, CDS and similar |  1 |  |
|  | OTC Swaps and similar instruments (different from IRS, CDS and similar) |  20 |  |

These adaptations would also help to mark out the relevance of the table for existing products as compared to new PRIIIPs: whereas newly launched PRIIPs would need to apply the entire table in order to compute their transaction costs, funds with a relevant trading history would only rely on the assumptions for the implicit cost elements. Explicit costs comprising in particular broker fees, depositary fees, taxes and potential fees charged by specialised custodians in case of equity transactions would be disclosed on the basis of actual transaction data according to § 6 (j) of Annex II.

<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>

In order to allow comparisons between products, all amounts should be per annum. All detailed cost information of the financial instrument has to be included in the table on the presentation of costs (please also refer to MiFID2)<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>

We agree with the ESAs that if the insurance undertaking is not able to establish the fair value of a biometric risk premium based on sound estimations of future benefit payments, it should be obliged to include the full biometric risk premium in the cost calculations. As regards principles of establishing the fair value, we think that profit sharing mechanisms must not be taken into account as a cost mitigating factor. Expected profit sharing shall already be accounted for in the presentation of performance scenarios which shall be calculated net of costs. A further deduction for the purpose of cost calculations would result in an unjustified double counting of estimated shared profits for insurance-based PRIIPs and thus would privilege them over other investment products

<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>

It would be useful for investors to obtain coherent information about all factors mitigating the anticipated return in one place. Therefore, we support the idea to present the fair value of the biometric risk premium in the first table below the RIY figures in order to depict that in insurance-based investments, there are also other elements than costs that will impact the overall performance of the investment.

<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>

Please refer to MiFID2 rules. There is no need to find a specific PRIIPs solution because the ex-ante cost disclosure of MiFID2 is more relevant due to the fact that it includes further cost components (e.g. costs of financial service). In addition, Level 1 does not require a further detailed cost disclosure and we would not favor a second table as we doubt that that it will be possible to include on 3 pages four different tables with additional information.<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>

As per the previous answer, we recommend using MiFID 2 as the model and not to design a peculiar PRIIPs solution. The example of a graphical breakdown presentation offered on page 14 of the consultation paper adds little in terms of client centricity compared to a table and seems not to be in line with the results of the consumer testing undertaken with regard to drafting a KID format.

<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>

Including further information in the KID will add further complexity. There is also the risk that by highlighting the "moderate" scenario, investors may be induced to think that this represents a promise of that return. This would be a highly undesirable outcome for both investors and regulators. No outcome should be flagged by the document as the outcome which an investor should rely on unless that return is formally committed to by the PRIIP manufacturer.

Should this additional information nevertheless be included in the KID we recommend that the example shows percentages per annum.

<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>

Yes, to reduce the volume of information, the first and the second table of Annex VII should be combined in one table. As explained in Q22, we do not see the benefit of an additional graphic breakdown.

<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>

Our understanding is that the RIY would be computed as an annualized Total Cost, defined broadly as the total cost divided by the tenor of the product. This would ensure numbers in the cost table add up and comparability with UCITs funds.

The calculation of the RIY (see § 66 and 68 of the consultation paper) should be reworded and the ESAs should provide practical examples for structured products**.**

<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>

The breakdown should include all cost information on the financial instrument which may be relevant to comply with MiFID2. If the approach is not aligned with the cost reporting approach under MiFID2 this would confuse retail clients of the costs of a PRIIP.

<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 breakdown should include all cost information on the financial instrument which may be relevant to comply with MiFID2.

<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>

In principle, providers of retail investment funds benefit from the temporary exemption under Article 32 and thus are not formally covered by the PRIIPs Regulation for the time being. However, we expect the PRIIPs Regulation and the proposed implementing measures to have from the outset significant impact on the product information for investment funds. Such impact must be anticipated in particular in the following circumstances:

**Funds offered as investment elements of unit-linked insurance products**: As correctly outlined by the ESAs in the preliminary impact assessment, the options for dealing with investor information on **“multi option PRIIPs” (MOPs)** in Article 12(1) of the draft RTS would both trigger the necessity to supply the insurance undertaking issuing the unit-linked insurance with new information elements on the fund investments. This is because both options seek to ensure that information on each investment option in a MOP shall comply 1with the PRIIPs requirements especially in terms of the summary risk indicator, performance scenarios and presentation of costs (Art 13 and 15 (2) of draft RTS).

Since the insurance undertaking offering the unit-linked insurance contract will not be capable of producing such information on each underlying fund, it will refer to the fund provider for assistance and request delivery of the relevant information elements for creating a MOPs KID. In the end, the decision whether or not to satisfy such requests will depend to a significant extent on the competitive pressure and the importance of insurance-based distribution for the business model of a fund provider. We anticipate that most fund providers will strive to ensure delivery of the relevant information to the insurance undertakings which will have the practical consequence of undermining the temporary exemption under Article 32.

It is questionable whether such outcome was envisaged by the EU legislators or even is covered by the Level 1 text. Article 6(3) of the PRIIPs Regulation stipulates that in 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 PRIIPs KID on each 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.

Against this background, the ESAs should reconsider whether the approach proposed under Article 12(1) of the draft RTS can be justified having regard to the wording of Article 6(3) of the PRIIPs Regulation and the EU legislator’s deliberate choice to spare investment funds providing a UCITS-like KIID from the duty to implement new information standards by end 2016. As the EU provisions on KIID under the UCITS Directive will remain effective alongside the PRIIPs Regulation this means that UCITS would effectively need to deliver two separate sets of product information to the market which might considerably differ in some relevant details, i.e. as regards the presentation of risks and costs for a fund.

**Closed-ended funds traded on secondary markets:** With respect to closed-ended funds traded on secondary markets, we disagree with ESA’s impact assessment in relation to producing pre-contractual disclosures for PRIIPs traded on exchanges (see p. 124 Consultation Paper). In Germany (and some other member states), there is a significant number of closed-ended funds – some of which have been initiated back in the 1970s – which were not required to produce any pre-contractual disclosures for any transaction on the secondary market. Closed-ended funds are generally being offered to investors by manufacturers during a specific period at the beginning of the respective fund’s lifetime. After expiry of the subscription period, the funds may continue being traded on secondary markets which usually happens at the initiative of the (retail) investors themselves without any disclosure requirements, and no further sales by the PRIIPs manufacturer take place. It would be an unjustified burden for PRIIPs manufacturer being obliged to produce KIDs for PRIIPs without having the possibility to influence the trading of such PRIIPs.

The ESA’s should thus clarify that Art. 5 and Recital 12 of the PRIIPs Regulation shall be read in such way that the PRIIPs manufacturer is not required to produce a PRIIPs KID if it was not subject to the obligation to produce such PRIIPs KID upon the beginning of the subscription period in relation to the respective fund. The wording of Recital 12 of the Regulation - which refers to obligations which should continue to apply for as long as the PRIIP is traded on a secondary market – should in this respect be read in conjunction with Article 5 of the Regulation. Hence, the obligation to produce a PRIIPs KID should only continue to apply in case the PRIIPs manufacturer was originally subject to such obligation when making available the respective PRIIPs.

The obligation to produce a PRIIPs KID should not apply if the trading on a secondary market takes place without the PRIIPs manufacturer itself making available the PRIIPs to retail investors. In particular, the PRIIPs manufacturer should not be obliged to produce a PRIIPs KID for a product which may be made available to retails clients at the initiative of existing (retail) investors who want to sell their interest in existing closed end funds.

In order to provide legal certainty in this regard, we suggest supplementing the wording of Recital 20 to Draft RTS as follow:

 “*20. Where a PRIIP is not currently available for retail investors, the continued review and revision of the key information document for that PRIIP would be disproportionate, however a review and revision of the key information document should be undertaken if such a PRIIP is ~~to become~~* ***made*** *available to retail investors again by the* ***PRIIPs manufacturer****.* ***Provided that the PRIIPs manufacturer originally had the obligation to draw up a key information document pursuant to Article 5 PRIIPs Regulation******~~T~~****the trading on a secondary market* ***taking place upon approval of the PRIIPs manufacturer*** *however would not exempt the PRIIP manufacturer from the obligation to continue to review and revise the key information document for that PRIIP.*"

**Disclosure of product costs according to** **MiFID2**: The provisions of cost transparency under MiFID2 match to a large extent with the envisaged standards under the PRIIPs Regulation. In particular, the draft Level 2 texts implementing MiFID2 explicitly require information on transaction costs for all products, including investment funds, for which distribution or other investment services are provided. Since the EU fund regimes currently do not encompass standards on calculation and disclosure of transaction costs, it is likely that the market (and regulators) will expect fund providers to calculate transaction costs in line with the implementing measures for the PRIIPs KID. Consequently, fund management companies have great interest in ensuring that the methodology for computing transaction costs for the purpose of PRIIPs KID disclosure is correct from the start and does not entail unreasonable costs or efforts. Due to the cost information requirements under MiFID2, UCITS and other retail funds formally benefitting from the temporary exemption under Article 32, will be probably allowed no grace period when it comes to calculation of transaction costs.

Overall, we expect that the impact of the Level 2 measures on the fund industry in terms of both financial resources and operational efforts will be much higher than expected by the EU legislator. Should the requirements for MOPs remain unchanged, then many fund management companies will be effectively compelled to set up internal projects in order to provide their business partners from the insurance sector with PRIIPs-compliant SRI, performance scenarios and cost figures. Such elements should in principle be delivered well ahead of the entry into force of the PRIIPs Regulation in order to enable insurance companies to produce PRIIPs KIDs on unit-linked insurance products on time.

Since the specific standards for MOPs were not discernible before publication of the draft RTS in November 2015, most fund providers have not yet assigned specific budgets and set up no business projects for PRIIPs implementation. If needed to be made up in the short term, such projects would probably entail disproportionately high costs. In any case, it is utterly inappropriate to assume that of all things fund providers shall be ready for the PRIIPs regime going live well ahead of its formal implementation date even though they manage the only sort of PRIIPs for which a temporary exemption from scope applies. <ESMA\_QUESTION\_PRIIPS\_28>