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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>

PRIIPs[[1]](#footnote-2) should be coordinated with MiFID II due to the overlaps in the legislation and for this reason we would encourage a postponement of PRIIPs to align the entry into force with MiFID II and to allow fruitful coordination of the legislative acts. Moreover, taken into account the fact that (i) there is 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, i.e. at the beginning of the summer holiday period with a deadline for responding falling as well in that period; and the consultation paper which was published late autumn) and (ii) there are certain errors in the consultation paper itself (in the risk/reward section) and a correction was only published on 05 January, we would like to point out that the already tight deadlines become 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).

There is a risk that funds will be impacted by PRIIPs via wrappers before the intended implementation date for funds. For wrappers we suggest a postponement of PRIIPs implementation until all investable underlying PRIIPs have been included in the regulation.

It should be kept in mind that the PRIIPS regulation although important in terms of information is not alone in the regulatory universe. It is part of information tools that may be complemented by interactions with advisers that may clarify some parts of the document. On top of that information in many cases regarding financial products there is a full prospectus with much more information.

Then in terms of details and prescriptiveness of methodologies we think that the aim of the document being first a tool for retail investors to discriminate among a group of similar products shall not be lost in the name of an assumed mathematical certainty, many factors linked to cost are either marginal, not material or not truly discriminatory for an investor, in the end we should not end up in a situation where a product is not selected compared to another for wrong reasons even if they were computed according to a sound methodology, there are as well other parameters important to the investors like quality of the service and proximity, that also play a role in the product selection.

Specifically regarding cost disclosure we think that costs shall be subject to a materiality threshold. Specifically transaction and legal costs shall not be specifically disclosed if they represent less than a given percentage of overall costs (e.g. “other costs may amount to less than X%”). This may circumvent many tricky computations barely understandable to professionals not to mention retail investors.

**Scope**

In our opinion 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. That said, there is still no clarity as to whether derivatives are in the scope of PRIIPs regardless of whether they correspond to the definition of PRIIPs in the Regulation or 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. We therefore question the rationality behind producing a document that will misinform retail investors with documentation that should be aiding their educated investment decisions.

**A) Derivatives that do not correspond to the definition of PRIIPs in the Regulation**

According to Article 4 of the PRIIPs Regulation, a PRIIP “means an investment, including instruments issued by special purpose vehicles as defined in point (26) of Article 13 of Directive 2009/138/EC or securitization special purpose entities as defined in point (an) of Article 4(1) of the Directive 2011/61/EU, where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor. However in Annex II, Part 1, 9(c) of the ESA’s joint consultation document it is highlighted that all derivatives as defined in MiFID II are in the scope. This does not take into account that the characteristics of some derivatives do not correspond to those of PRIIPs as defined in the Regulation. Some derivatives represent an agreement between counterparties to exchange pre-determined cash flows and do not present any amount repayable subject to fluctuations. They do not involve exchange of cash flows based upon a floating reference rate or benchmark, they are not leveraged instruments, and they do not contain optionalities.

Therefore, they should not be in the scope of the PRIIPS regulation. Those derivatives should only be subject to the MIFID II obligations in particular the obligation of price and cost disclosure.

**B) Derivatives used for hedging purposes**

Derivatives used for hedging purposes are often customized, and the consequences of expanding the scope of the KID to derivatives, used for hedging, do not seem to be analysed. If hedging is not out of the scope, there is a risk that small and medium sized companies will not have access to the necessary customized derivatives for hedging away risk. Requiring a KID when selling derivatives to small and mid-sized companies will also create further bureaucracy when these investors are trying to hedge against a volatile market, which will happen repeatedly throughout a day.

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 KID in a situation where all the transaction details are tailor-made and agreed with the counterparty? With regard to the exchanged traded derivatives used for investment purposes which are per definition more standardized it makes more sense to use a standardized template – KID, and these seem to be captured by PRIIPs (because of its ‘investment’ purpose’). Moreover, we also fear that imposing a KID for OTC derivatives will simply be a not workable solution in practice for neither the investment firm nor the client. When derivatives are used for hedging, there may often be an element of urgency as the commercial client which to mitigate the inherent risk of the commercial (or investment) arrangement instantly.

Commercial hedging uses various derivatives, because banks provide this service, so the hedging client avoids the risk, when running a cross border business. If derivatives used for hedging purposes cannot be exempt from the regulation, the cost associated and the administrative complications will certainly be 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 (meaning 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 (leaving the client with an unhedged FX position, interest rate exposure or commodity exposure).

Also there is the risk of a concentration of issuers of derivatives, as only large banks can handle numerous customized derivatives. This could push further to a general concentration in the financial industry, as customers of smaller banks will have to consider whether they will only use banks offering the full range of transaction banking and hedging products. The risks described above will also apply where hedging is made of an investment position.

If small and medium sized corporations are forced to either under- or over-hedge. This may give rise to accounting issues (hedge positions) for the corporation. It has not been analysed further by the banking industry.

**Risk Indicator**

The approach proposed in the Consultation Paper for the determination of the risk class raises considerable concerns. Firstly, the Consultation Paper proposes a mixed qualitative and quantitative approach. In a first step, products are qualitatively assigned to different risk categories. That alone already prevents individual financial products to be compared against each other, i.e. an overall consistent risk classification. The product scope for this qualitative distribution has also not been defined clearly for all product types; in particular, there would have to be a clear statement that the term "derivatives" used here does not include (structured) transferable securities.

Moreover, also the scaling within this methodology has apparently 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. 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 the approach favoured by the Expert Group.

**Insurance Products**

Costs associated with investing via insurance product should only include those costs that are connected with the investment, e.g. insurance costs should be split between insurance administration and investment costs. Furthermore any paid insurance premiums, that are directly linked to the return of the pension insurance, shall be included in the costs, e.g. premium paid in regard to the interest risk element of a profit insurance, premium paid for an insurance guarantee in regard to negative returns on a unit-linked insurance etc.

**Performance Scenarios**

The approach proposed in the Consultation Paper requires the scenarios primarily to be based on the "recommended holding period" (which could be something like "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 holding periods. At least for structured securities, scenarios on this basis would be highly problematic from a methodological perspective. Instead, for products with fixed maturity dates, only one performance scenario should be required for that date. Generally three scenarios would be required.

However, different to the practice for certain national law product information documents, the middle scenario would be called "moderate" and would have to be calculated based on the expected return. This kind of approach appears doubtful from a methodological perspective, as it could mislead investors to expect the realisation of that scenario with a high degree of certainty. In addition, it could let certain product structures appear generally unappealing; depending on prevailing market conditions, it could seem that only "long" or "short" products would make sense to invest in at certain points in time. This would make a comprehensive product line for all kinds of investors' market expectations difficult to defend. 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 where investors neither make a win nor loss.

There is a risk of the assumptions used for calculating performance scenarios are used as competitive measures. This is not sound business and regulators should be entitled to intervene, if assumptions used for the basis of calculating performance scenarios are deemed improbable/too optimistic.

It is unclear how it is ensured that the performance scenarios when taking into account that costs do not favour either a passive or active strategy. Though we agree that it does not seem possible to align assumptions for calculating performance scenarios, NCAs should be allowed to issue national binding guidelines for assumptions used for calculating performance scenarios.

We believe the performance scenarios should accommodate actively managed funds in order to increase the span. The worst performance should be worse than the market and the best performance should be better than the market.

Given that in the “*What is this product*?” section, a product description, starting by the legal form taken by the PRIIPs, must be provided, we would like to remark that a clarification regarding the legal form of certificates is needed. In this regard, it is worth noting that:

* Certificates are defined in Article 2(1)(27) of Regulation (EU) No 600/2014 (MiFIR) as “*securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments*”; and
* In some countries, certificates have long been issued as unsecured debt securities.

This means that some certificates would see their seniority ranking lowered by the new MiFIR definition, penalising the investors that have bought certificates issued as unsecured debt securities. We would therefore suggest an open definition of certificates as negotiable debt securities, where the ranking of the debt is defined in the issuing terms and not simply by definition. The seniority ranking of certificates should be defined by the issuer in a similar way to bonds. A subordinated bond is subordinated because the issuing documentation contains subordination conditions.

**Costs**

The Consultation Paper is not fully consistent on this topic. For example, there are differences with regard to the treatment of hedging costs (general definition of "fair value" on the one hand, explicit requirement for this to be counted as cost on the other). Also, the Consultation Paper implies that the fair value should correspond, for each product, to the value reported in the balance sheet of the issuer. However, the issuer's balance sheet does not show the value of all individual products issued. The proposed treatment of spreads probably needs to be readjusted at least partly (depending on the outcome of the detailed assessment of cost disclosure jointly under PRIIPs and MiFID II - discussions within the industry ongoing). Furthermore, the holding period assumed for the presentation of costs would need to be aligned with the holding period used for performance scenarios (in case of its amendment as suggested above, using the fixed maturity date). Given the length restriction that will apply for KIDs, the presentation of the prescribed cost items in the KID would better be restricted to only one table (instead of two, as proposed in the Consultation Paper).

It is emphasized that it is important to ensure alignment with the similar requirement under MiFID II to the highest extent possible; and 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). In our opinion 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. It also has to be taken into consideration that the spread in some cases would be a “reverse” cost because the mid-price in the marked is unfavourable compared to the prize at which the manufacture has traded.

Furthermore, we would like to point out that sometimes banks are not able to disclose certain costs to their clients, because they do not possess the information on the costs themselves at an appropriately granular level. Therefore, it will be a big challenge to define a correct exit cost of a PRIIP already at the moment such a product is offered on a primary market, as it is not possible to predict the future, and in fact any number that is put on a KID as an existing cost may change in case of unpredictable market circumstances.

With regards to the granularity of the details only expected costs shall form part of the information, the level of which shall be material for the investors. It would be a counterincentive to have investors switch to one good product to another simply because a potentially remote cost may be 2 basis point for custody, which in itself is an element but not necessarily the one discriminating factor.

Apart from these questions, we note that the guidance on relaying the KID to the client remains overly conceptual 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.).

As for the criteria mentioned in Article 20(2) of the draft Regulation, for reasons of clarity it seems necessary to refer specifically to other provisions of the regulation, i.e. with regard to what constitutes a “similar nature” of a PRIIP (which would require a certain categorisation), the “complexity” of a PRIIP or further clarification on the ‘non-continuous manner’/‘PRIIP not available to retail investors’ (idem).

**Applicability**

Grandfathering: 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? . We have considerable doubts as to whether it is possible to produce KIDs for all products that were launched before 01/01/2017.

Article 5(1) obliges the manufacturer to draw up a KID before a PRIIP is made available to retail investors. We strongly feel that a sharper definition is needed as the manufacturer has to have control over the date the PRIIP is made available (which triggers his obligations). It should be made clear that the manufacturer can set a date for distribution (for example in the final terms) which triggers the KID duty and that he is able to stipulate selling restrictions. A third party offering the product without consent or knowledge of the manufacturer should not be able to trigger the PRIIPs obligation for him. Similarly in Article 7(2) as above it appears that a third party can trigger duties (in this case to provide the KID in a different language) for the manufacturer without his express consent.

It is not clear who is obliged to translate the KID according to Article 7 of the PRIIPS Regulation. We consider this obligation to fall on the manufacturer. In order to understand the full scope of the manufacturer obligation related to the translation of the KID it is necessary to take into consideration that PRIIPS can be distributed not only on the primary market (either directly by manufacturer itself either by intermediaries appointed through distribution agreements either sometimes by direct listing) but also on the secondary market through negotiations on trading venues. Therefore it is essential to detail the expected behaviour from manufacturers regarding the translation of the KID having in mind the many different ways that PRIIPS can be distributed on the primary and secondary markets.

**Liquidity**

We believe liquidity risk is insufficiently covered in the MRM. A fund with up to 49% in illiquid assets and 51% in liquid government bonds will be MRM rated from the government bonds +1. This rates it at MRM 4 where the recent financial crisis of 2008 proved short term losses due to lack of liquidity to be much larger.

**Conditions on timing on being bound by a contract or offer**

The content of recitals 23 and 24 of the draft RTS and of Article 20 of the Draft RTS is not consistent and does not take into account the new regulatory framework of product governance within MiFID II, which requires distributors to:

* Have in place adequate product governance arrangements to ensure that products and services they intend to offer or sell are compatible with the needs, characteristics, and objectives of an identified target market and that the intended distribution strategy is consistent with the identified target market;
* Appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients’ interests are not compromised as a result of commercial or funding pressures. As part of this process, firms shall identify any groups of clients for whose needs, characteristics and objectives the product or service is not compatible.

We therefore believe that Recitals 23-24 and Article 20 overlap with the MiFID II provisions on product governance obligations for distributors, which more adequately regulate the whole item of targeting the clients and the proper distribution strategy according to the characteristics of each investment product.

**Interconnection and interaction between PRIIPs and MiFID II**

There are strong thematic interconnections between some of the new investor protection rules in MiFID II - such as cost disclosure, performance scenarios, target market and some other specific product governance requirements - and PRIIPs. We would therefore like to draw urgent attention to the fact that a decision to delay implementation of the MiFID II investor protection rules would have strong implications for PRIIPs as well, and would in all likelihood result in manufacturers not having sufficient clarity on all content details for providing all required KIDs until the end of 2016.

It is not clear whether investment firms should be exempted from providing clients with the KID when offering the service of individual portfolio management consisting of investment decisions entirely taken by investment firms and given that it is an investment service to be offered and not a product.

Where individual portfolio management should be linked to a guarantee represented by a put option, is it correct to consider that requirements on KID will not apply to the put option in question?

It must be taken into consideration whenever intermediaries are not able to abide by their obligation to provide retail clients with the KID (PRIIPS purchased on the secondary market by the clients in the context of reception and transmission of orders or execution of orders on behalf of clients, execution of orders on behalf of clients through dealing on own account) due to the lack of proactive initiative towards clients and/or distribution agreement with the product manufacturer. In the above mentioned situations it would be more correct to require that the KID is made available by trading venues where the PRIIPS are traded or, alternatively, to refer to the KID available on the internet site of the manufacturer.

It must be taken into consideration it might occur that clients decide on their own initiative to invest in PRIIPS traded in foreign trading venues, transmitting their orders to intermediaries in the context of reception and transmission of orders or execution of orders on behalf of clients, execution of orders on behalf of clients through dealing on own account. In the above mentioned situation the proposal of making the KID available by the trading venues where the PRIIPS are traded could imply the possibility that the KID is not translated in the same official language of the clients’ Member State while the proposal of referring to the KID available on the internet site of the manufacturer could work better in case manufacturer should publish on their internet site the KID translated in the different EU language.

**Assessment of non-complex financial instruments**

ESMA should develop guidelines for the assessment of financial instruments being classified as non-complex considering listed, delta one, pure indexation certificates of broad general market indices as non-complex products. As explained below (see question nº 8), listed, delta one, pure indexation certificates that track the performance of broad general market indices should be classified in a similar way to ETFs and ETNs and be subject to the same investment service rules because: a) they have the same market exposure; b) they are listed and; 3) their price is very transparent.

The same arguments in the Final Report of Guidelines on complex debt instruments and structured deposits that led ESMA to recognise that inflation-linked bonds should not be regarded as complex, should equally apply to delta one, pure indexation certificates of broad general market indices. There is a ‘linear’ relationship based on a reference index constructed by a recognised calculation agent, with pre-defined objective constitution rules – this is the reason why they are not subject to manipulation and are familiar to investors. Access to these products would also be compromised as a result of the appropriateness requirements not demanded for the investment in similar products, namely ETFs.

<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 an overlap with PRIIPs definition of complex products and that in MiFID II. Instead we would suggest a streamlining of the PRIIPs definition with that of MiFID II as is the case in other areas of the RTS rather than recreating an entirely new definition set.

We would also suggest 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.

<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>

It is preferable that presentations are made in the form of percentages, and on annualised basis. Where a monetary amount is required it would make sense to use the minimum investment amount of the related product.

In any case it has to be multiple of 10 in order to allow investors to calculate the impact of cost information for their individual amount. EUR 10.000 would be appropriate for most products (or similar in other currencies), as it is not too high nor too low for a retail investors and easy to use for mental computation.

<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>

At this stage one needs to keep in mind who are the users of the data, these are retail investors generally not accustomed to probabilistic method, the presentation shall be true enough to help understand the risk profile of the investment, it shall not aim at delivering a definitive scientific answer.

<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>

Detailed calculation examples for the market risk volatility would be useful. The RTS introduces new market volatility concepts and formulas and it would be advisable to show the detailed calculation examples by the ESA’s, which will be useful for the market participants in order to understand the logic behind the new concepts and formulas and apply similar calculations for the in-house products.

We would start by stating that the categorization of products for the sake of the MRM calculation is very difficult to understand, hence making it difficult to offer concrete feedback on the methodologies. Category II are AIFs and UCITS and other PRIIPS acting in a similar capacity as AIFs or UCITS i.e. investing in the same assets directly or indirectly. In addition it is required that they have a delta of 1 or above or a leveraged exposure paying a constant multiple of a market price or index and 2 years of daily/4 years of weekly prices are available alternatively a natural benchmark or proxy exists. We can hence not see Cat II as a catch-all; in principle only AIFs, UCITs and similar structures.

<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>

TYPE YOUR TEXT HERE

<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 do not favour a voluntary increase of the SRI if this hampers the level playing field and proper comparison of similar products between banks. One will not be liable for being extra protective. In cases of more complex products, they are often discussed – under the MIFID II umbrella – with an adviser that may discriminate products in a given bucket of risk.

There should be as little discretion as possible to reduce (i) differences in between product manufacturers and (ii) complication of SRI calculations. Furthermore, allowing for further disclosure makes the KID no longer standardized between manufacturers and more difficult to understand.

Moreover, what will happen in a case (where does the responsibility lay?) when a product manufacturer did not voluntarily increase the disclosed SRI.

<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>

Any method though needs to be without discretion to ensure consistency in between product manufacturers. The consequence of a term structure is increased complexity and one may therefore question if this outweighs the potential benefits for the investor. A simple alternative that achieves the objective is to separately disclose the credit risk class via for example a rating agency rating. Should the investor desire to investigate further then default probabilities are generally available from the rating agencies, typically these default probabilities have a term structure.

Maturity is certainly a factor. However, this is more relevant for the market risk (duration). Therefore, the MRM class could be increased by 1 step for all products with maturity > 10 years.

Regarding credit risk, the impact of the longer maturity may be felt by the investor “on-the-way” through possible (step-by-step) downgrades of an issuer which will then have a consequence on the CRM class. At the end the impact of longer maturities on the credit risk is reflected through the dynamic approach of the SRI concept.

<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>

In general, the scale 1-7 is reasonable. However, the assignation of the product Categories I-V to the MRM seems to be unbalanced. 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 (i) MRM 6 for products with a significant total loss potential (long positions in options, derivatives with leveraged downside) and (ii) 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.

Regarding MRM categorisation, listed ETFs (UCITS and AIFs), listed delta one products like ETNs, certificates and related debt securities should fall into the same risk category as UCITs and AIFs, i.e. category II.

All passive investing products such as Exchange Traded Notes (ETNs), certificates and other equivalent debt securities that act in a similar capacity and have the same market risk as UCITS and AIFs (e.g. ETF), namely the ones that are listed, delta one, pure indexation trackers of broad general market indices that invest directly or on a synthetic basis on similar underlying assets and pay the corresponding multiple, should have the same MRM classification, i.e. category II, because:

a) It’s the only way to ensure a technically correct, fair and unbiased treatment between identical market risk exposures within the MRM classification;

b) UCITS and AIFs should not have any comparative advantage (or for that matter disadvantage) against products of similar market risk, independently of the legal form of other financial products; if not, asset managers and providers of UCITS and AIFs will be favoured, and vice-versa, against banks and other manufacturers of ETN and certificates;

Regarding the methodology of calculation of MRM for UCITS should be applied to other similar market risk PRIIPs like listed ETN, delta one certificates and other debt equivalent securities. This allows a fair and non-biased comparison of MRM from different products, not only under each category but across categories.

Regarding MRM (also applicable to Performance Scenarios), historical data should be interpreted in the whole document as historical prices of the PRIIP. For newly issued PRIIPS historical data should be calculated as the fair value of the PRIIP based on historical data of the underlying or other relevant variables. For newly issued PRIIPS, for which the underlying and other relevant variables have a liquid market, this would allow for:

a) A fair comparison of MRM;

b) Information easily accessible;

c) Avoidance of cumbersome, subjective and complex of forward looking views and simulations, whenever they are unnecessary;

d) Easy to apply by manufacturers, to check/validate by regulators and the best way to ensure comparability, i.e. identical benchmarking (individual discrepancy views from manufacturers and lack of harmonisation).

It should also be considered how to handle the historical data when a PRIIP has undertaken a significant change in its investment strategy. And in the same category it should also be considered how to handle a merger or split where a new legal entity/structure is created but where the investment strategy is substantially unchanged.

Regarding MRM methodology, illiquid PRIIPS should have a higher MRM than liquid PRIIPS of the same type and vice-versa. For example, a category II ETF like an UCITS or AIFs, ETN, delta one certificates and other debt related securities on a broad based equity index should, in any circumstance, have better MRM class than a category V, which not only are more illiquid, but also less diversified (conformity between Table 1 in paragraph 13 page 36 and the table in paragraph 29 page 38 of Annex II).

In addition, we have simulated the MRM of some of the main equity indices using the VAR Methodology for category II. For broad based equity indices like EUROSTOXX50, DAX, S&P500, FTSE100 or IBEX it resulted in a class 6 MRM, clearly worse than the level 5 applied to illiquid broad based equity funds. Therefore, it is recommended lowering the risk levels of each volatility range of table in paragraph 29, page 38, of Annex II, in order to increase its consistency with table 1, paragraph 13, page 36.

On the other hand, for category II PRIIPS a definition of MRM classes using VAR may lead to changes of MRM class for a PRIIP over time. A pre-definition of MRM classes by product type like the one used in Table 1, paragraph 13, page 36, for category V could be more stable. Additionally, we believe it is crucial to differentiate the products benchmarked to broad based and diversified indices from products constructed under an active and less diversified investment strategy. Therefore, we suggest the creation of a table that classifies the different product classes of products with benchmarks, for example: Money Market, Government Bonds, Corporate Bonds, Broad Based Equity Products and All the Others and Structured PRIIPS. Each product type would have a comparable, but lower risk level to Category V products. In the “all others” and Structured Products class, MRM should be determined using the *Cornish Fisher Methodology*.

Finally, we suggest the definition of what constitutes a broad based equity index as a diversified, liquid and tradable equity index, calculated by a reference index provider with predefined transparent composition rules that allow investors to replicate it. The publication of a list of some of the reference index providers and some of the main broad based equity indices that should fall into this specific MRM class would also be helpful.

Regarding CRM and SRI - credit and market risk should be analysed separately and not in a SRI. If an SRI is actually adopted, it should remove the overweight to credit risk taking into account the probability of default.

Nevertheless, if an SRI is to be adopted, we suggest either a change in the approach or an adjustment to the grid, as suggested below:

• Change of approach: In the credit risk assessment, the ranges reflecting credit quality steps that consider different probabilities of default (table in paragraph 67, page 43) have implied an expected loss and should lead to a credit risk class, as defined in paragraph 64 page 42, that reflects similar expected loss of the same class in MRM (for example a credit risk class 3 should have the same expected loss as a MRM class 3).

• Adjustment of the grid as proposed in the table below. We suggest a more balanced grid for the SRI (established in paragraph 69, page 44) 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). This would fully align the SRI grid to what is proposed under paragraphs 64 and 67 (for instance under the current proposal for a MR1 – a class of instruments with minimum market risk - the full range of credit steps is not available and no justification seems to be given for it).



<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>

EBF members are in favour of the option to assign a qualitative assessment and automatic allocation to MRM class 1 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. This consideration should be extended to all financial products that offer a total guarantee.

It should also be clarified how to consider multiple option products where one of the options offers the protection and the other ones do not.

The tenor is relevant because of the price impact of duration. If there is a secondary market the tenor is irrelevant because the market risk has to be taken into account anyway. And if there is no secondary market the tenor may not generate a price impact. At the end the tenor is irrelevant in both cases.

<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>

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<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>

The appropriateness of the look through approach depends on the type of PRIIPs.

<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 depends on the home currency of the investor. Since the PRIIP should be the same in all countries it is not possible to have a general integration into the SRI calculation. However, a general disclaimer could be added giving investors a hint that he should be clear about the currency of his investment and that he should be aware that there could be currency risk in case the currency of the products would not be his home currency.

The KID should be as simple as possible and introducing another dimension such as currency risk will make the document less intuitive for the investor to understand. A written risk warning describing this risk is more appropriate and expected to be less misleading. Furthermore the background and reason as to why an investor invests in a foreign currency may vary and this will not be captured, possibly be misleading.

We would furthermore like to highlight that this question illustrates the issue with the inclusion of derivatives in the scope of PRIIPs. If currency risk should be considered, how would currency risk be presented on for example an FX forward, which would be used to hedge against currency risk?

<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 level of risk is in our view both intrinsic thus linked to the product nature, but also comparative in a wider market, in most cases such products may present a lower risk potential than other instruments. The fact that it is only at final redemption that the value is guaranteed may simply be explained. In addition many of these products will be discussed with clients/investors.

<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>

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<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>

EBF members do not think it is possible to state that either a table or a graph would per se be more effective to present performance scenarios to a client. It is our conviction that it boils down to the content of the information one seeks to transmit to the client. Furthermore the objective is that the document remains succinct, thus there is a trade-off between what is in and the length of the document and accordingly the likelihood of its reading.

The addition of a recommended holding period in itself adds a (possibly detrimental) 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.

<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 think that transaction costs, unless they represent a material component of the fund cost structure should not be disclosed beyond a generic statement e.g. “other costs including transactions represent less than X% or basis points”.

In the end the real issue is what would be the trade-off. Should an otherwise good product be abandoned because transaction costs are too high, from an investor perspective the trade-off is between a product that delivers a given return and the risk to attain that return, so that 5% return will nearly always be preferred to 4%.

<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>

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<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 annualized to facilitate comparison across products and reduce misinterpretation.

<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>

Estimating the fair value of the biometric risk premium could raise technical and practical difficulties, especially for products where the insured biometric risk is small, if compared to the investment amount.

<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>

If the RYI is referred to the scenario in which the biometric risk doesn’t occur, it could be considered to leave out the overall costs of the insurance coverage from the indicator, especially if the biometric risk is small, giving to the consumer an indication about the costs related exclusively to the financial outcomes of the product.

The investor could be informed about the biometric risk premium overall in a separate line, as additional cost referred to the scenario where the insurance coverage occur.

<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>

Taken into account that the costs alienation with rules as required by MiFID II for the packaged retail investment product is essential, we believe that the table should include both percentage figures and monetary values (cfr. MiFID II requirements where both figures are required).

We have to be realistic these are in most cases estimates, perhaps good ones, but nevertheless estimates, they shall then be used as indicative values for an investor to select a product.

Percentages are preferable since it facilitates comparison across products and reduces misinterpretation. <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 client centricity compared to a table. It is difficult to understand how this proposal relates to the results of the consumer testing that has been undertaken with regard to drafting a KID format. On that basis we cannot support it.

<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>

The example should show percentages p.a.

<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. Information shall be limited to the table, if the investor is willing to have more details there exists either a full prospectus or a discussion with an adviser is possible.

<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>

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<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>

It is important to ensure compliance and consistency with MiFID 2/MiFIR requirements.

From a distribution angle, we cannot unambiguously support a breakdown towards one-off, recurring and incidental costs, as this concept in itself seems hard to explain to the average retail client. The reason for this is that this approach mixes defined and possible costs as well as distribution and product costs. We are convinced that such an approach, especially when it would prove to be at odds with the cost reporting approach under MiFID II, would be detrimental to the understanding of the average retail client of the costs of a PRIIP, and therefore defeat the purpose of the KID.

Specifically, as for mentioning distribution costs in a KID, we are fully opposed to include distribution cost notably as they vary from one channel to another and are not per se linked to the product. On top of this there may be a risk of conflicting regulation between distribution and information, noting that both types of costs have to be disclosed.. For instance, the suggestion made in the consultation paper to include in the KID the highest possibly applicable distribution fee in case of divergence of such fees between distributors, strikes us as absolutely unacceptable from a client perspective.

<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>

It is important to ensure compliance and consistency with MiFID 2/MiFIR requirements.

Again, we are convinced that 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 we would favour expressing costs as a percentage of the initial invested amount.

Most importantly in this regard is to regulate the calculation base and methods to the fullest extent in order to achieve a level playing field between product providers and to eliminate any leeway which would give rise to competitive (dis)advantages in KID contents based solely on diverging interpretations of the regulation relating to calculation bases and methods.

<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>

We are puzzled by the high level of details and computation expected from the product provider compared to the generally low interest and understanding of the different concepts by clients/investors.

We still consider that if the concept of the PRIIPS/KID is appealing the burden to produce the information and maintain it shall be proportionate to the objectives of informing a retail investor to help him choose one product over another. Then one can build a very strong case to choose one product based on rationale stemming from the regulation, but because many parameters will be based on assumptions/forward looking measures one shall not over-expect what the regulation can deliver. In conclusion this regulation to deliver optimal results for all stakeholders shall be as pragmatic and straightforward as possible.

<ESMA\_QUESTION\_PRIIPS\_28>

1. Please note that the EBF response to this consultation is not supported by the French Banking Federation (FBF). The members of the FBF will respond to this consultation individually. [↑](#footnote-ref-2)