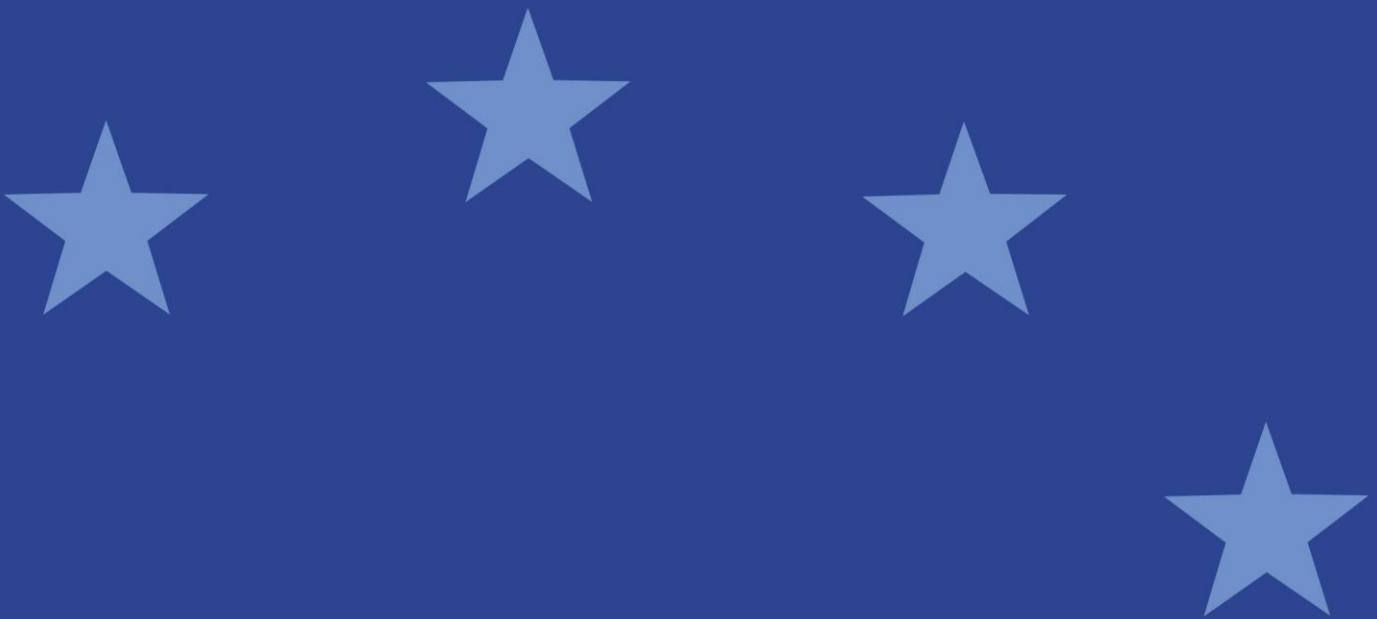


Response form for the Joint Consultation Paper concerning amendments to the PRIIPs KID





Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out proposed amendments to Commission Delegated Regulation (EU) 2017/653 of 8 March 2017¹ (hereinafter “PRIIPs Delegated Regulation”).

The consultation package includes:

- The consultation paper
- Template for comments

The ESAs invite comments on any aspect of this paper. Comments are most helpful if they:

- contain a clear rationale; and
- describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of Regulation (EU) No 1286/2014² (hereinafter “PRIIPs Regulation”).

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Q1** Insert your responses to the questions in the Consultation Paper in the present response form.
- Q2** Please do not remove tags of the type <ESA_QUESTION_PKID_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- Q3** If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- Q4** When you have drafted your response, name your response form according to the following convention: ESA_PKID_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_PKID_ABCD_RESPONSEFORM.

¹ COMMISSION DELEGATED REGULATION (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents

² Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ L 352, 9.12.2014, p. 1.

- Q5** The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the [ESMA website](#) under the heading 'Your input - Consultations' by **13 January 2020**.
- Q6** Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725³. Further information on data protection can be found under the [Legal notice](#) section of the EBA website and under the [Legal notice](#) section of the EIOPA website and under the [Legal notice](#) section of the ESMA website.

³ Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	Invest Europe
Activity	Fund Management
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Belgium

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_PKID_1>

The Public Affairs Executive ('PAE') of Invest Europe, the association representing the European private equity, venture capital and infrastructure investment industry appreciates the opportunity to respond to this Consultation on the draft regulatory technical standards ("RTS") of the Key Information Document (KID).

Treatment of sophisticated investors

Private equity funds⁴ are typically structured as limited partnerships with a contractually limited life. They have in the vast majority of cases a term of ten years with an option to extend, normally by two years. The closed-ended partnership interests that form the private equity fund are not intended to be traded. Commitments made by investors into a private equity fund are entered into with the intention of being held for the life of the fund and so are by nature long-term.

For that very reason, private equity managers primarily market their funds to institutional investors, such as pension funds, sovereign wealth funds, insurance companies, banks and government agencies/development funds, who are both looking for and able to make such long-term commitments. While private equity managers will therefore in most cases be outside the scope of the PRIIPs Regulation, there will however be some instances, in particular for venture capital, where prospective investors in the fund will include high-net worth individuals or other types of "sophisticated" or semi-professionals investors.

Irrespective of whether they would fall or not within the KID scope, none of the investors in these funds will be by any standard an average or a typical retail investor, except in (very) rare circumstances (for example listed venture capital funds). Investors in private equity will have a significant experience of these types of funds often because they work in or are in some way connected to the broader private equity industry and sometimes, in the case of successful entrepreneurs, will commit capital into funds that support ideas and projects, or more generally a sector, in which they are an expert.

Despite this, none of these investors will typically meet the MiFID II definition of a professional client. As a consequence, any private equity fund being made available to them (and only to them) will have to prepare a KID despite having an investor base consisting solely of individuals with a long-term commitment, with large ticket sizes and with a thorough understanding of the consequences of their investment.

As we explained in previous submissions, the reason for this is entirely due to the fact that MiFID elective professional tests are calibrated for MiFID investment services provided in relation to liquid assets such as

⁴ For the purpose of this response, and unless otherwise stated, any reference to "private equity funds" or "funds" shall be deemed to include both venture capital and private equity funds, the former being considered a sub-set of the private equity asset class.

traded shares. We have made many representations over the years on the inappropriateness of the MiFID professional client definition in the context of private equity funds' offerings. In essence, regardless of their wealth, sophistication or experience, the tests are extremely difficult to satisfy for individuals who invest in long-term private equity funds. Moreover, due to the long-term nature of the industry, the number of deals will always be limited. Even for a very large institutional investor the number of funds invested in over a 12-month period would typically be in single figures.

This is a real concern in the context of the Capital Markets Union, as the immediate result of the introduction of the PRIIPs Regulation has been a limitation of these sophisticated investors' investment opportunities, as fund managers often have chosen not to sell their funds to them any longer due to the burden of producing a KID for only a few investors, despite these investors' experience and sophistication.

Overall, the PRIIPs Regulation had an impact on the ability of venture capital funds – for which sophisticated investors typically represent a more significant share of the fundraising – to channel the capital held by these investors towards the EU innovative economy. This ultimately affected the attractiveness of the EuVECA passport that first acknowledged in EU law the value of these investors and allowed fund managers to market to them at EU level.

In that context, we believe the creation of a semi-professional or sophisticated category of investors, and the exclusion of these investors from the requirements set in the PRIIPs Regulation would go a long way in addressing the issues posed by the current framework from the perspective of our members. Another – perhaps simpler, approach would be to clarify the terms “made available” to exclude certain type of offers made on a confidential basis to a limited number of clients. The validity and relevance of both of these options are detailed in our response to Question 5.

Issues related to the specificities of the private equity asset class

Irrespective of our concerns with the scope of the PRIIPs Regulation, we would like to use the opportunity of this consultation to comment on specific aspects of the KID and to point out again the fundamental differences that exist between typical offerors of packaged products – which are at the core of the PRIIPs and UCITS scope – and certain types of alternative investment funds such as private equity.

We stressed in previous responses why private equity funds, which are typically unlisted and closed-ended funds that invest for an average of 5 years in unlisted private companies, cannot be compared to products that have daily price quotes. We also explained why certain typical private equity features, such as the use of carried interest as a pay-out mechanism, should not be presented in a standardised way, in order to avoid giving these investors inappropriate information.

While we believe that ESAs are now taking into account most of these features, we would like to advise them to be extremely careful when making changes to the existing framework. Of most concern to our members within this exercise is the transfer of UCITS KIID rules to retail AIFs, which, in many circumstances, will have very different characteristics from open-ended mass retail funds. We therefore strongly oppose such transfer.

<ESA_COMMENT_PKID_1>

1. : Are there provisions in the PRIIPs Regulation or Delegated Regulation that hinder the use of digital solutions for the KID?

<ESA_QUESTION_PKID_1>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_1>

2. : Do you agree that it would be helpful if KIDs were published in a form that would allow for the information to be readily extracted using an IT tool?

<ESA_QUESTION_PKID_2>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_2>

3. : Do you think that the amendments proposed in the consultation paper should be implemented for existing PRIIPs as soon as possible before the end of 2021, or only at the beginning of 2022?

<ESA_QUESTION_PKID_3>
We do not have any particular views on this point.
<ESA_QUESTION_PKID_3>

4. : Do you think that a graduated approach should be considered, whereby some of the requirements would be applied in a first step, followed by a second step at the beginning of 2022?

<ESA_QUESTION_PKID_4>
We do not have any particular views on this point.
<ESA_QUESTION_PKID_4>

5. : Are there material issues that are not addressed in this consultation paper that you think should be part of this review of the PRIIPs Delegated Regulation? If so, please explain the issue and how it should be addressed.

<ESA_QUESTION_PKID_5>
As explained in the introduction, we believe that the scope of the PRIIPs Regulation should be reconsidered as quickly as possible to ensure the KID only has to be offered to individuals who really require it. We would like to stress to the ESAs there are two relatively straightforward ways to mitigate this issue without giving rise to investor protection concerns:

exempting sophisticated investors, as defined in Article 6, paragraph 1 of the EuVECA Regulation, from the scope of the PRIIPs Regulation

All prospective investors, including semi-professional ones, are provided with considerable amounts of information on the fund and the fund manager and carry out their own due diligence prior to making an investment. In addition, as part of their investment, they are required to acknowledge that they understand the risks involved in making that investment. Given their level of experience, which is closer to professional investors than for "typical" retail investors, we do not consider that there is a substantial increase in investor protection should such investors receive a KID.

consider that a PRIIP should be viewed as "made available" to retail investors within the EEA only where the PRIIP is widely distributed

Retail investors typically represent a very small proportion of the fund's investor base and these would be distributed under private placement regimes when possible. It is a key feature of private placement regimes both within the EEA and internationally that there should be no general solicitation of investors or general advertising of the product. A private equity firm will therefore typically not make any marketing materials relating to its funds generally available on its website.

The PRIIPs Regulation (Article 5(1) and Article 9) requires the KID to be published on the manufacturer's website. This publication requirement gives the impression that the manufacturer is always soliciting retail investors generally, potentially drawing certain investors to asset classes that are not suitable to them. In a private equity context, the private placement memorandum and other marketing materials will on the contrary be distributed on a confidential basis to a limited number of investors only – typically, specifically identified high net worth individuals within the EEA (such as strategic partners in a particular industry sector).

We believe as a result that the requirement to produce a KID should not apply where a manager distributes a fund on a private placement basis, e.g. where marketing materials are distributed to fewer than 150 retail investors per EEA member state. This would be consistent with the thresholds set in the Prospectus Regulation.

As the PRIIPs regime was clearly designed for mass-marketed retail products, and given the unintended consequences of other interpretations, we think it would be reasonable to interpret the concept of a PRIIP being "made available" to retail investors consistently with either or both of the concepts referred to above, and that this might reasonably be addressed through Q&A without necessarily requiring an amendment to the underlying legislation.

<ESA_QUESTION_PKID_5>

6. : Do you have comments on the modifications to the presentation of future performance scenarios being considered? Should other factors or changes be considered?

<ESA_QUESTION_PKID_6>

TYPE YOUR TEXT HERE

<ESA_QUESTION_PKID_6>

7. : If intermediate scenarios are to be included, how should they be calculated for Category 3 PRIIPs (e.g. structured products)? If intermediate scenarios are not shown in the performance section, which performance assumption should be used for the 'What are the costs?' section?

<ESA_QUESTION_PKID_7>

TYPE YOUR TEXT HERE

<ESA_QUESTION_PKID_7>

8. : If a stress scenario is included in the presentation of future performance scenarios, should the methodology be modified? If so, how?

<ESA_QUESTION_PKID_8>

TYPE YOUR TEXT HERE

<ESA_QUESTION_PKID_8>

9. : Do you agree with how the reference rate is specified? If not, how should it be specified?

<ESA_QUESTION_PKID_9>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_9>

- 10. : The revised methodology specifies that the risk premium is determined by future expected yields. The methodology further specifies that future expected yields should be determined by the composition of the PRIIP decomposed by asset class, country and sector or rating. Do you agree with this approach? If not, what approach would you favour?**

<ESA_QUESTION_PKID_10>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_10>

- 11. : The ESAs are aware that historical dividend rates can be averaged over different time spans or that expected dividend rates can be read from market data providers or obtained from analyst reports. How should the expected dividend rates be determined?**

<ESA_QUESTION_PKID_11>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_11>

- 12. : How should share buyback rates be estimated?**

<ESA_QUESTION_PKID_12>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_12>

- 13. : Do you agree with the approach for money-market funds? Are there other assets which may require a similar specific provisions?**

<ESA_QUESTION_PKID_13>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_13>

- 14. : The methodology proposes that the future variance be estimated from the 5-year history of daily returns. Should the volatility implied by option prices be used instead? If so, what estimate should be used if option prices are not available for a particular asset (equities namely)?**

<ESA_QUESTION_PKID_14>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_14>

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

<ESA_QUESTION_PKID_15>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_15>

16. : Do you favour any of the options above? If so, which ones? How would you ensure that the information in the KID remains comparable for all products?

<ESA_QUESTION_PKID_16>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_16>

17. : Are there any other compensatory mechanisms that could address unforeseen methodological faults? If yes, please explain the mechanism; explain how it ensures that scenario information in the KID allows investors to compare PRIIPs, and explain how the information for similar products from different manufacturers remains sufficiently consistent.

<ESA_QUESTION_PKID_17>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_17>

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

<ESA_QUESTION_PKID_18>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_18>

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

<ESA_QUESTION_PKID_19>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_19>

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

<ESA_QUESTION_PKID_20>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_20>

21. : Do you think these alternative approaches should be further assessed? If yes, what evidence can you provide to support these approaches or aspects of them?

<ESA_QUESTION_PKID_21>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_21>

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

<ESA_QUESTION_PKID_22>

TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_22>

23. : Do you think illustrative scenarios should be included in the KID as well as probabilistic scenarios for structured products?

<ESA_QUESTION_PKID_23>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_23>

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

<ESA_QUESTION_PKID_24>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_24>

25. : Do you agree with this approach to define PRIIPs which would show illustrative performance scenarios using the existing definition of Category 3 PRIIPs? If not, why not? Where relevant, please explain why this approach would not be appropriate for certain types of Category 3 PRIIPs?

<ESA_QUESTION_PKID_25>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_25>

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

<ESA_QUESTION_PKID_26>
We disagree with the assumption that past performance should necessarily be seen as relevant, even in cases where it is available, and we appreciate that ESAs recognised so far that it is not recommended to include past performance for Category 4 PRIIPs.

In general, we believe that using past performance to project future returns can lead to fundamentally misleading results when the product is not exposed to volatility risk. The more the ability of the fund manager depends on factors that are not related to such performance, the higher the chance past performance would not give the investor a proper estimation of the risk he or she faces.

In a private equity context, past performance would for example not take into consideration the fact that the underlying businesses invested in by the previous funds managed by the same fund manager will be different from the investments that will be invested in by the fund currently being raised: the nature of private equity funds is that companies are invested in by the fund, held for a number of years while the fund manager assists the company management team in taking the business through a particular period of growth or re-development, then exits the investment, either through a sale of the business to another private buyer or trade buyer, or it is floated on the stock market. When the next fund is raised, it is typically unlikely that there would be an opportunity, or a reason, to seek to invest in these companies again. In the case in the fast evolving arena of venture investing opportunities to create businesses in sectors often arise because of technological developments that make it possible to invest in areas that even a short time ago would not have existed and where, by definition, no track record exists.

None of these factors will appear in the KID, despite playing an important role in determining the risk features of a manager's new fund compared to the previous one. It is also the case that the very long time between one fund being raised and the next means that other factors impacting the performance of previous funds could have changed during that time (e.g. market environment, stage in the economic cycle, evolution of the fund management team).

Relying too heavily on past performance information also carries the danger of over-emphasizing temporary depressed market conditions previous private equity funds have been exposed to at one stage of their lifetime, as well as being too optimistic during periods of market booms that are no longer indicative of a later exit environment.<ESA_QUESTION_PKID_26>

27. : Would your answer to the previous question be different if it were possible to amend Article 6(4) of the PRIIPs Regulation?

<ESA_QUESTION_PKID_27>

No. As explained above, we believe the problem lies with the use of past performance in itself and not with the way it is presented. While further details could help alleviate part of the problem, this would not solve the fundamental issue that for some PRIIPs, such as private equity ones, the calculation of expected performance from the outset of the fund is not a norm. This is due to the fact that it is impossible to establish all the factors and assumptions at the outset of a fund that could be used to construct a probabilistic outcome given the long term and illiquid nature of the funds and investments.

That said, we believe that for certain type of KIDs, such as private equity ones, there could be the possibility of providing a commentary in this section explaining why the narrative explanations may not apply in this case. Furthermore, it may be worth providing additional elements, such as the fact that the presentation of the performance scenarios makes no differentiation between an investment and a commitment.

<ESA_QUESTION_PKID_27>

28. : Do you think that it can be more appropriate to show past performance in the form of an average (as shown in the ESA proposal for consumer testing) for certain types of PRIIPs? If so, for exactly which types of PRIIPs?

<ESA_QUESTION_PKID_28>

No. Presenting past performance in the form of an average would not take into account all the issues we raised in answer to Question 26, or the fundamental role the fund manager plays in ensuring the success of a specific fund. In a private equity fund context, and more generally for any closed-ended fund with no redemption right, the only relevant performance data to look at is the ultimate return the investor will get at the end of the fund, and not the average performance of the fund over the course of the life.

<ESA_QUESTION_PKID_28>

29. : Do you have any comments on the statement that would supplement the display of past performance (e.g. with regard to the presentation of costs which are not included in the net asset value (NAV))?

<ESA_QUESTION_PKID_29>

TYPE YOUR TEXT HERE

<ESA_QUESTION_PKID_29>

30. : Are you of the opinion that an additional narrative is required to explain the relationship between past performance and future performance scenarios?

<ESA_QUESTION_PKID_30>

As explained in our response to Question 26, we are opposed to the inclusion of past performance for certain type of PRIIPs.

<ESA_QUESTION_PKID_30>

31. : Do you see merit in further specifying the cases where the UCITS/AIF should be considered as being managed in reference to a benchmark, taking into account the provisions of the ESMA Questions and Answers on the application of the UCITS Directive⁵?

<ESA_QUESTION_PKID_31>

We do not have any views on this point as private equity funds are not managed in reference to a benchmark.

<ESA_QUESTION_PKID_31>

32. : Do you see the need to add additional provisions for linear unit-linked insurance-based investment products or linear internal funds?

<ESA_QUESTION_PKID_32>

TYPE YOUR TEXT HERE

<ESA_QUESTION_PKID_32>

33. : Do you agree that a fixed intermediate time period / exit point should be used instead of the current half the recommended holding period to better facilitate comparability?

<ESA_QUESTION_PKID_33>

We do not have any specific views on the use of a fixed exit point as opposed to half of the recommended holding period. We would however want to use this opportunity to reiterate our concerns with the obligation to present several recommended holding periods for closed-ended funds where no redemption rights are available.

For closed-ended private-equity funds - and more generally for similar types of illiquid funds - the first two scenarios in the cost table, whatever their length, simply do not reflect the nature of the fund. In these cases, we believe it would be more appropriate for ESAs to give the fund manager the explicit opportunity to only present a holding period that corresponds to the full life of the fund. This would allow the investor to have a more appropriate idea of the length of time it will have to hold the PRIIP and avoid giving her/him the impression that there is an opportunity for him/her to surrender its investments at some point before the end of the fund's stated lifespan.

More generally, we feel that the investor in the fund will be better informed of the illiquidity of the product through a clear disclaimer that there is no opportunity to redeem its commitment before the end of the life of the fund. Such disclaimer will have a higher informative value for the investor than two columns describing high cost of leaving it after a given number of years.

<ESA_QUESTION_PKID_33>

⁵ See "Section II – Key Investor Information Document (KIID) for UCITS" (in particular, Q&A 8) of the Q&A document available at: https://www.esma.europa.eu/sites/default/files/library/esma34-43-392_qa_ucits_directive.pdf

- 34. : In this case (of a fixed intermediate time period), do you agree to show costs if the investor would exit after 5 years for all PRIIPs with a recommended holding period of at least 8 years? Or do you prefer a different approach such as:**

<ESA_QUESTION_PKID_34>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_34>

- 35. : Do you think it would be relevant to either (i) use an annual average cost figure at the recommended holding period, or (ii) to present both an annual average cost figure and a total (accumulated) costs figure?**

<ESA_QUESTION_PKID_35>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_35>

- 36. : Do you think that it would be helpful, in particular for MiFID products, to also include the total costs as a percentage of the investment amount?**

<ESA_QUESTION_PKID_36>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_36>

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

<ESA_QUESTION_PKID_37>
We appreciate the recognition by the ESAs of the difference between performance fees and carried interest.

We are not aware of any private equity fund where both carried interest and performance fees are applied. Nonetheless, we believe it may be easier, given the importance of making a clear differentiation between a performance fee and a carried interest, to treat these in separate rows of the KID. Provided each of these rows would only have to be added to the table when such types of “incidental costs” are effectively applied, this would not extend the length of the KID. At the same time, it would continue to provide for a clear differentiation between carried interest and performance fees.

As a reminder, carried interest is a profit share mechanism typical to private equity, which aligns the interests of fund managers with those of investors. While carried interest is linked directly to the performance of the fund, there are several elements of the carried interest arrangement and its calculation, which makes it different from traditional performance fees, including:

Carried interest is typically not paid each year: while carried interest arrangements are agreed at the outset of the fund, cash will typically only be paid by the fund to the carried interest participants once investors have had their drawn capital back plus an agreed preferred return (as explained below).

Carried interest is usually only paid once the fund has achieved the “preferred rate of return”: at the outset of the fund, fund managers and investors agree the detailed terms of the carried interest arrangement. This will include a level of return (the preferred return) that will accrue exclusively to external

investors, and the pre-determined formula for how returns will be shared between the fund manager and these external investors, once this threshold has been achieved. This means that any investors into the fund will see both the payment of their original investment and an agreed return before any carried interest is paid to the fund manager. For the same reason, there is therefore no guarantee that carried interest will ever be paid: if the fund does not achieve this pre-determined level of return there will be no carried interest. For the avoidance of doubt, this means that, unlike funds in other asset classes that operate on a “high water” basis to trigger their carry, typical private equity fund carry structures only see carry generated if over the life of the fund investors get all their money back and achieve at least the level of preferred return agreed from the outset.

<ESA_QUESTION_PKID_37>

38. : Do you agree with this analysis from the ESAs? If yes, what are your views on the extent to which fees related to the management of the underlying real estate assets, i.e. the properties themselves, should be taken into account in the calculation of the cost indicators?

<ESA_QUESTION_PKID_38>

First, we would like to clarify that real estate funds and private equity funds have different characteristics and that we are only responding to this question from the perspective of the latter type of fund. We find the ESAs’ analysis slightly unclear, as it appears intended to address both fund types, but mostly refers to real estate funds.

We appreciate why the ESAs want to make sure that fees that are exclusively related to the management of underlying assets should be included in the KID. However, in the private equity context it is unlikely that including these figures in the costs section of the KID would be useful to investors.

Fees relating to underlying private equity fund assets generally fall into one of two categories:

- Asset-related fees that are included in the fund's overall management fee. Because these are typically offset against the fund's management fee, they would not normally constitute an additional cost to investors. It would therefore be potentially misleading to include them in the KID costs disclosures, and there would be a significant risk of double counting.
- Fees for additional services, charged directly to the relevant portfolio company. The relevant services are often provided by an affiliate of the fund manager, and priced on an arm's length basis. They relate to the ongoing performance of the relevant portfolio company held by the private equity fund (similar to some types of property-related fees charged in the real estate fund context).

Our view is that the fees charged for such services should be disclosed to investors in general terms if there is a potential conflict of interest for the fund manager. However, they are not investment-related costs to be borne by investors, and so including them in the KID would again be potentially misleading. Because of their ongoing nature, it would also be difficult (if not impossible) to determine the appropriate amount of such fees that should be disclosed to investors up-front in the KID.

Finally, we would also note that it is difficult for private equity funds to find appropriate peer products to be used as a comparison for their cost calculations, as each fund tends to have very bespoke features.

<ESA_QUESTION_PKID_38>

39. : Do you agree with the ESAs' preferred option 3 to revise the cost tables?

<ESA_QUESTION_PKID_39>

We do not fundamentally disagree with the approach taken in option 3 but it is not our preferred option.

<ESA_QUESTION_PKID_39>

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

<ESA_QUESTION_PKID_40>

Out of the four options proposed, the second one is potentially most appropriate. This is however only due to the fact that this option, to the contrary of Option 3, allows for a single detailed description of costs (as opposed to a description for each of the proposed holding periods). As we indicated in our response to Question 33, we are generally wary, in a closed-ended illiquid fund context, of any presentation that assess the cost at a time where the investor would in any case not be likely, or even not at all be in a position, to walk away from its investment.

Overall, we favour any approach which allows the fund manager to give a clear indication to the investor about the impact of carried interest on its return. As explained in our response to Question 41, we therefore very much support the idea, presented in Option 1, 2 and 3, to present carried interest in a more detailed manner than previously.

At the same time, we would like to use this opportunity to warn the ESAs that, irrespective of the value of presenting costs in a simplified manner in a summary table, this may in some cases give misleading information to the investor, for the very reasons described above. We would therefore call the ESAs to keep a pragmatic approach, in light of the diversity of products that will fall under the KID scope.

<ESA_QUESTION_PKID_40>

41. : In particular, do you think that the proposed changes to the presentation of the impact of costs on the return in percentage terms (i.e. including reduction in return before and after costs) is an improvement on the current presentation?

<ESA_QUESTION_PKID_41>

We very much support the ESAs' suggestion to allow the fund manager to describe, in a maximum of 100 characters, the impact of carried interest as a defined percentage. As can be seen from our description of carried interest in our response to Question 37, this information will be of much higher value to the investor than a single number. Indeed, such a number will necessarily be misleading as carried interest is not *per se* a cost but a percentage of the net profits of the fund, provided investors have received back what they invested in the fund and the fund achieves a pre-defined rate of return.

For example, Option 4 would lead to an outcome where the reduction in return will be set as zero in a default scenario - and this despite the fact there is a definite chance, if the fund is successful, that the investor will share a portion of its return with the manager.

<ESA_QUESTION_PKID_41>

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

<ESA_QUESTION_PKID_42>

TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_42>

43. : What are your views on the appropriate levels of these thresholds? Please provide a justification for your response.

<ESA_QUESTION_PKID_43>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_43>

44. : If UCITS would fall in the scope of the PRIIPs Regulation, do you agree that the coexistence of the UCITS KII (provided to professional investors under the UCITS Directive) and the PRIIPs KID (provided to retail investors under the PRIIPs Regulation) would be a negative outcome in terms of overall clarity and understandability of the EU disclosure requirements? Are you of the view that the co-legislators should therefore reconsider the need for professional investors to receive a UCITS KII, as the coexistence of a PRIIPs KID together with a UCITS KII (even if not targeted to the same types of investors) would indeed be confusing, given the differences in the way information on costs, risks and performance are presented in the documents? Alternatively, are you of the view that professional investors under the UCITS Directive should receive a PRIIPs KID (if UCITS would fall in the scope of the PRIIPs Regulation)?

<ESA_QUESTION_PKID_44>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_44>

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

<ESA_QUESTION_PKID_45>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_45>

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

<ESA_QUESTION_PKID_46>
We do not have any specific issues on the three proposed paragraphs but we would like to remind ESAs that, while all UCITS have to comply with the relevant Regulation, not all AIFs are subject to prudential supervision by a national competent authority. There is therefore a risk of creating an unlevel playing field for many AIFs that are not regulated by any financial authority. This is particularly true for paragraph 12 of Article 4.

<ESA_QUESTION_PKID_46>

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

<ESA_QUESTION_PKID_47>

We are opposed to the extension, without a careful analysis of the relevance of the transposition, of the requirements set in the UCITS Q&A, not only to all type of PRIIPs, but also (and in some cases especially) to management companies of AIFs.

Given the difference in nature between AIFs and UCITS, we find that it would be preferable for UCITS to be classified as a separate category, to avoid impacting the treatment of AIFs which will not always subject to the same rules and which, when closed-ended, will have very different characteristics from UCITS funds.

A good example of this is Q&A 7, which refers to the publication of an up-to-date remuneration policy, which is a requirement exclusive to the UCITS which are required to mention this information in their UCITS KIID as per the UCITS legislation.

<ESA_QUESTION_PKID_47>

48. : Do you agree that these requirements should be extended to all types of PRIIPs, or would you consider that they should be restricted to the Management Company of the UCITS or AIF?

<ESA_QUESTION_PKID_48>

As we explained in our responses to the questions above, the amount of Articles that will have to be transposed from the UCITS KIID to the PRIIP KID demonstrates the complexity of such a shift.

Any rules transposition would require careful consideration to ensure the nature of all PRIIPs but also all AIFs - which sometimes have very different structures than UCITS - is respected. The question of the extension of UCITS requirements to retail AIFs is therefore one that can be as complex as the extension to other PRIIPs. Taking this into consideration, we disagree with the ESAs that it is granted that the KIID framework should start applying to retail AIFs.

From the perspective of our industry, there is a clear danger in transposing rules that were thought and produced in the context of open-ended structures mass-marketed to retail clients, to closed-ended AIFs solely offered, most often under a confidential basis, to sophisticated individuals. In the same way UCITS rules differ from AIFMD ones, and in the same way the AIFMD has different set of rules for different types of AIFs, rules related to the marketing information should differ from UCITS funds and retail AIFs.

We would like to again point out that an obvious solution to part of the issue potentially created by this extension would be to restrict the scope of the KID to products that are widely distributed to retail investors. This would ensure that closed-ended AIFs which are most different from UCITS do not comply with rules that, from our perspective, are not appropriate to them.

More specifically, here is a non-exhaustive list of potential issues with the application of Articles 7, 9 and 15 to 21 of the UCITS Regulation to AIFs and their managers:

Regarding Article 7, and as pointed out by ESAs in their consultation paper, it should indeed be clarified that there is no possibility of redemption for certain retail AIFs such as private equity funds.

Regarding Article 15 to 20, we strongly oppose the use of past performance in a private equity context for reasons that are detailed in our answer to Question 26 of this consultation. Moreover, applying past performance calculated on the basis of the NAV may pose problems for private equity funds where the calculation of the performance will differ significantly than for open-ended UCITS.

Regarding Article 20, we are concerned that some of the information contained in this section will not be relevant to all AIFs, and in particular those that are not regulated under the AIFM Directive and/or by any national competent authorities, that do not have to appoint a depositary. Moreover, some of the language (such as the “price of units”) may not be as relevant in a non-UCITS context.

Overall, the sheer number of differences between a UCITS and a closed-ended AIF makes us concerned that several UCITS marketing concepts would start to be applied to those AIFs, irrespective of these differences. In light of this, it may be much simpler to maintain a clear distinction between UCITS and AIFs, or at least closed-ended AIFs.

From a more general perspective, we would urge the ESAs to be extremely cautious about any tentative of harmonisation between the UCITS and the AIFMD framework. This always bears a significant risk of impacting negatively AIFs (or UCITS) with specific business models and operating mechanisms.

<ESA_QUESTION_PKID_48>

49. : Do you have any comments on the proposed approaches in relation to the analysis and proposals in this Section, and in particular on the extent to which some of the abovementioned requirements should be extended to other types of PRIIPs?

<ESA_QUESTION_PKID_49>

Please see our comments above.

<ESA_QUESTION_PKID_49>

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

<ESA_QUESTION_PKID_50>

TYPE YOUR TEXT HERE

<ESA_QUESTION_PKID_50>

51. : Do you envisage significant practical challenges to apply this approach, for example for products which allow the investor to choose between a wide range or large number of options?

<ESA_QUESTION_PKID_51>

TYPE YOUR TEXT HERE

<ESA_QUESTION_PKID_51>

52. : Do you see any risks or issues arising from this approach in relation to consumer understanding, for instance whether the consumer will understand that other combinations of investment options are also possible?

<ESA_QUESTION_PKID_52>

TYPE YOUR TEXT HERE

<ESA_QUESTION_PKID_52>

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

<ESA_QUESTION_PKID_53>

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<ESA_QUESTION_PKID_53>

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

<ESA_QUESTION_PKID_54>
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55. : Do you have any comments on the preliminary assessment of costs and benefits?

<ESA_QUESTION_PKID_55>
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<ESA_QUESTION_PKID_55>

56. : Are you able to provide information on the implementation costs of the proposed changes, in particular regarding, (1) the proposed revised methodology for performance scenarios (using a reference rate and asset specific risk premia), and (2) the overall changes to the KID template?

<ESA_QUESTION_PKID_56>
TYPE YOUR TEXT HERE
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57. : Are there significant benefits or costs you are aware of that have not been addressed?

<ESA_QUESTION_PKID_57>
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