JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

JC 2018 60

8 November 2018

Joint Consultation Paper concerning amendments to the PRIIPs KID

Draft amendments to Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs).

Contents

1. Responding to this Consultation

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 2017[1] (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.

Submission of responses

Please send your comments in the provided Template for Comments, by email to CP-18-005@eiopa.europa.eu by 6 December 2018

Contributions not provided in the template for comments, or sent to a different email address, 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 (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the ESAs in the implementing rules adopted by their Management Board. 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.

[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. Context

2.1 Background

The Regulation[2] on packaged retail and insurance-based investment products (hereinafter "PRIIPs Regulation") has been applicable since 1 January 2018 and requires PRIIP manufacturers to draw up and maintain Key Information Documents (KID) for the PRIIPs that they market to retail investors, and for retail investors to be provided with a KID when they purchase a PRIIP.

The aim of the KID is to provide retail investors with consumer-friendly information about the key features of investment products, including on what they might gain if they invest, the risks they are taking, and all the costs they will have to incur with the ultimate aim of improving transparency in the investment market. PRIIPs are, for example, funds, structured securities, structured deposits and unit-linked and with-profits life insurance contracts.

The PRIIPs Regulation is supplemented by the PRIIPs Delegated Regulation specifying the presentation and contents of the KID, which is based on Regulatory Technical Standards (RTS) that the ESAs were jointly mandated to develop.[3]

2.2 Review of PRIIPs

In view of the ESAs' obligations to promote common supervisory approaches, as well as to review the application of RTS adopted by the European Commission and to propose amendments where appropriate[4], since January the ESAs have been working with national competent authorities (NCAs) to monitor the implementation of the PRIIPs Regulation.

A review of the PRIIPs framework was envisaged to take place by the end of this year (31 December 2018)[5]. This was intended to follow from two years of application; however as the original application date needed to be deferred by one year this shortened the time period for a review. In view of this, the European Commission informed the ESAs in July that it intends to defer the review of the PRIIPs Regulation until a later date in order to allow for the collection of robust evidence and data[6].

[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).

[3] JC 2016 21 (31 March 2016).

[4] Article 29 'Common Supervisory Culture' of the ESAs' Regulations.

[5] Article 33(1) of PRIIPs Regulation.

[6] Request to the ESAs to develop guidance on facilitating the production and distribution of information on investment funds as of 1 January 2020

2.3 Exemption for UCITS

The PRIIPs Regulation provides a temporary exemption for management and investment companies and persons advising on, or selling, UCITS from the obligation to produce and provide a PRIIPs KID.[7] For such funds a Key Investor Information (KII) Document is currently provided to investors in accordance with Directive 2009/65/EC [8] (hereinafter "UCITS Directive"). As things stand, the exemption from the PRIIPs KID obligations ceases to apply on 31 December 2019. This means that from 1 January 2020, UCITS and relevant non-UCITS funds[9] will be required to prepare a PRIIPs KID. In the absence of legislative changes, UCITS and relevant non-UCITS funds would be required to draw up and publish both a PRIIPs KID and UCITS KII.

2.4 Intended way forward

On 1 October 2018, the ESAs wrote to the European Commission in response to a request[10] to develop guidance on facilitating the production and distribution of information on investment funds as of 1 January 2020. In that letter the ESAs highlighted the need to avoid a situation where there are duplicate information requirements from 1 January 2020. The ESAs understand that the co-legislators are currently discussing potential legislative changes, but any changes will not be agreed until next year.

In the letter, the ESAs also stated that they consider targeted amendments to the PRIIPs Delegated Regulation to be needed. These would provide for the appropriate application of the PRIIPs KID requirements by UCITS and relevant non-UCITS funds, subject to the discussions by the co-legislators, as well as address some specific issues that have arisen from the practical application of detailed technical requirements, prior to the overall review of the PRIIPs Regulation that has now been deferred.

When drafting the letter the ESAs were cognisant that any amendments should be submitted to the European Commission as soon as possible, in order to allow the co-legislators to scrutinise these amendments before the end of the current legislative term and to provide sufficient time for market participants to implement the necessary changes. The ESAs, therefore, proposed to conclude their review well before the end of 2019 and more specifically to aim for the first quarter of 2019.

Following the letter it has become clear that amendments would need to be submitted to the European Commission as early as possible in the first quarter of 2019, in view of the European Parliament elections which are due to take place towards the end of May. Given this short timeframe,

[7] The exemption also applies to non-UCITS funds in Member States which extend the application of UCITS rules on the format and content of the UCITS key investor information to non-UCITS made available to retail investors (Article 32(2) of the PRIIPs Regulation).

[8] DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

[9] I.e. non-UCITS funds offered to retail investors to which Article 32(2) of the PRIIPs Regulation applies.

[10] JC 2018 55

it is necessary to limit the proposed amendments to the most pressing issues and those that facilitate the possible use of the KID by UCITS and relevant non-UCITS funds.

In addition, in view of the urgency of the matter due to these time constraints, as well as taking into account the targeted nature of the amendments, a shortened period of public consultation is considered appropriate in this case.

3. Overview of the Consultation Paper and next steps

3.1 Overview of Consultation Paper

In the context of the targeted review described in Chapter 2, this consultation paper provides stakeholders with an opportunity to comment on proposed amendments to the PRIIPs Delegated Regulation.

These amendments relate to the empowerment in Article 8(5) of the PRIIPs Regulation concerning the presentation and content of the KID, including methodologies for the calculation and presentation of risks, rewards and costs within the document.

Section 4 of the consultation paper discusses the nature of the proposed amendments and is divided into three main sections:

- Section 4.1 includes proposals to change the approach for performance scenarios as well as a description of several other options that were identified;
- Section 4.2 presents potential amendments on a limited number of other specific issues based on the information gathered by the ESAs since the implementation of the KID;
- Section 4.3 considers possible changes in view of the exemption in Article 32 of the PRIIPs Regulation being due to expire and the possible use of the PRIIPs KID by UCITS and relevant non-UCITS funds from 1 January 2020.

Section 4 includes various specific questions on which feedback is requested from respondents to this public consultation.

Legislative amendments would take the form of RTS. Given the urgency of the matter, the ESAs do not intend to issue a further public consultation on the legislative text of a draft RTS. However, Section 4 also seeks to explain in detail the nature of legislative changes that would be needed for the different proposals. The ESAs will also seek the opinion of their stakeholder groups.

Preliminary analysis of the expected costs and benefits of the proposed amendments is also included in the consultation paper (in **Section 5**), in order to gather feedback on possible costs and benefits of the proposals and the relative scale of these costs and benefits for different stakeholders.

3.2 Next steps

The ESAs will consider the feedback received to this consultation paper.

The ESAs intend to submit the RTS and accompanying cost benefit analysis to the European Commission for endorsement during January 2019. The ESAs will also publish a final report including feedback on the consultation at this time.

It is intended that these amendments would be applicable from 1 January 2020. This is subject to the endorsement by the European Commission of the RTS, following which the European Parliament and Council would be given the opportunity to express any objections to the RTS as adopted by the European Commission. In view of the upcoming elections of the European Parliament, these processes would need to be concluded during the first or second quarter of 2019 in order for the proposed changes to take effect from the start of 2020. This would provide PRIIP manufacturers and persons selling PRIIPs with at least six months to implement the necessary changes.

4. Analysis and proposed amendments to the PRIIPs Delegated Regulation

4.1 Performance scenarios

4.1.1 Introduction

This section considers amendments to the approach to present information in the KID on what the investor may get in return when investing in a PRIIP in the form of performance scenarios.

Following the ESAs' decision to propose targeted changes to the PRIIPs Delegated Regulation, analysis has been conducted of the different possible options to, and the implications of, adjusting the method or presentation for performance scenarios. At the same time, the challenging timeframe to which amendments need to be finalised, and in particular the absence of time to test the proposals on consumers, significantly limits the extent to which new approaches or methodologies can be developed. The proposals made are therefore limited to targeted amendments to address the most urgent issues and facilitate the possible use of the KID by UCITS and relevant non-UCITS funds.

4.1.2 Background

In the letter sent by the ESAs to the European Commission on 1 October it was stated that:

> *It is intended to focus [amendments to the PRIIPs Delegated Regulation] on the methodology underpinning the scenarios and their presentation, including the narratives descriptions. In doing so the ESAs would take into account the views expressed by a range of different stakeholders as to whether the scenarios are providing reasonable expectations as to possible future returns. We previously highlighted the relevance of reviewing the current approach in our capacity as ESAs' Chairs in our Letter of 22 December 2016 in the context of the finalisation of the regulatory technical standards under Articles 8(5), 10(2) and 13(5) of the PRIIPs Regulation.*

The PRIIPs Regulation requires PRIIP manufacturers to include appropriate performance scenarios and information about the assumptions made to produce them in the KID. The current PRIIPs Delegated Regulation sets out how this is to be done. For most PRIIPs[11] the prescribed methodology requires an illustration of how the PRIIP could perform according to four different scenarios (stress, unfavourable, moderate and favourable). The figures presented in these scenarios are generally derived from a model which simulates possible outcomes based on the returns or prices, and fluctuations in those returns, over the previous 5 years. In summary:

[11] There is an exception, for example, for options and futures traded on a regulated market to present performance in the form of a pay-off structure graph (Article 3(5) of the PRIIPs Delegated Regulation).

- The unfavourable, moderate and favourable scenarios reflect the 10th, 50th and 90th percentile returns respectively[12];

- The stress scenario is calculated using a different model with a view to setting out significantly unfavourable impacts.

4.1.3 Feedback from stakeholders on the most critical issues following implementation

The main issue that has been raised since 1 January 2018 is that the performance scenarios risk providing retail investors with inappropriate expectations about the possible returns they may receive. In particular, it has been stated that the scenarios can provide an overly positive outlook of potential returns, where a product has experienced positive returns over the previous five years, that can be seen as above the longer-term norm. Given the positive performance of many asset classes over the previous five years, this issue pertains to a wide range of PRIIPs[13]. These concerns have been stated by both representatives of PRIIP manufacturers and sellers, as well as from associations representing retail investors.

When assessing this initial feedback, the ESAs were conscious that the current framework already intended to mitigate this issue, in particular via the inclusion of the unfavourable and stress scenarios and the use of narrative explanations, which means that the KID must include statements to clarify that the actual return will vary depending on the performance of the market. Nevertheless, the ESAs took note of the concerns raised following the implementation of the performance scenario methodology to the range of different types of PRIIPs, and started to consider the relevance of amendments to the approach.

4.1.4 Consumer testing

It will not be possible within the time frame of this process for the ESAs to conduct a consumer testing study on the amendments proposed on a representative sample of EU retail investors.

Nevertheless, the ESAs are of the view that limited amendments to the existing performance scenario approach can be envisaged taking into account the practical feedback received this year following implementation. In addition, when considering possible amendments it is still possible to seek to

[12] Future outcomes are impossible to predict. However, a model of how prices evolve in a financial market can be used to estimate the distribution of returns accessible to the investor. The methodology for performance scenarios assumes that the model results in the distribution of returns for the PRIIP (or the assets underlying the PRIIP) observed over the past 5 years. The historical distribution of returns is used to estimate the distribution of returns of the PRIIP at the end of the recommended holding period. The 10th, 50th and 90th percentile returns are read from this estimated distribution.

[13] This issue does not affect all types of PRIIPs. For example, it is understood that in general this is not a concern for Category 4 PRIIPs, given the dependence on factors unobserved in the market or to some extent under the control of the PRIIP manufacturer.

reflect the overall outcomes from the consumer testing study that was conducted during the development of the original draft RTS from 2014 onwards[14].

This consumer testing study was conducted in 2015 with the European Commission on the challenges faced by retail investors in using, understanding and comparing information on investment products. The study showed that simpler presentations of information were in general terms more effective for retail investors. In relation to performance, it also provided support for showing net results for different holding periods, including the recommended holding period, in three different scenarios[15].

The ESAs have borne in mind a number of aspects when assessing the relevance of amendments to the current approach in the PRIIPs Delegated Regulation:

- The current presentation of performance including a minimum of four scenarios (rather than three) was not subject to the consumer testing study;

- The consumer testing study did not include testing of the specific wording of the narrative explanations currently used in the KID, since these descriptions were developed based on the final approach to the presentation of performance that was decided upon after the consumer study;

- The consumer testing study demonstrated the challenges in relation to retail investors understanding the likelihood of performance scenarios.[16]

While consumer testing comparable to the study conducted in 2015 is not possible during the current targeted process, the ESAs will work with their stakeholder groups, as well as with national supervisory authorities in relation to national consumer panels or representatives, in order to specifically seek their opinions on the amendments proposed.

In addition, one NCA has already conducted a survey comprising 600 consumer representatives on the use of the KID. While this represents a limited exercise in only one Member State, the ESAs consider this to be a relevant source of information together with the other evidence that the ESAs have gathered since the implementation of the KID. Another NCA has carried out a "Call for Input"[17] to obtain views from consumers and industry on the operation of the PRIIPs Regulation, which can also provide relevant information.

[14] This process started with a Discussion Paper (JC/DP/2014/02 – 17 November 2014)

[15] See JC 2016 21 (Final draft RTS PRIIPs KID report), page 99.

[16] On page 5 of the executive summary it is stated that 'Respondents often wrongly assumed likelihoods when shown performance scenarios even where these purposefully did not include information on how probable they are, yet on the contrary respondents also made mistakes when provided with information on the probability of the scenarios. There appeared to be a clear motivation to find information on how probable the scenarios are, but some problems using the information where they were given it' (Executive summary – Consumer testing study of the possible new format and content for retail disclosures of packaged retail and insurance based investment products MARKT/2014/060/G for the implementation of the Framework Contract nº EAHC-2011-CP-01).

[17] FCA Call for Input (July, 2018).

4.1.5 Proposals for changes to the performance scenarios

This sub-section describes the proposed changes to the performance scenario approach and the implications in terms of legislative changes to the current PRIIPs Delegated Regulation.

The overall rationale of the proposed changes is that the presentation of the information is key to reduce the risk of the information in the performance scenario section of the KID being misinterpreted. At the same time, the challenging timeframe to which amendments need to be finalised significantly limits the extent to which new approaches or methodologies can be developed. Accordingly the amendments proposed entail the inclusion of additional information (on past performance) and changes to the presentation, but do not entail changes to the current methodology to generate future performance scenarios. Although there would be no changes to the figures displayed, it can be argued that these amendments will reduce the risk that the meaning of these figures is misinterpreted or that there is undue reliance on them.

The proposals also reflect the fact that the options identified to amend the methodology for future performance scenarios that would be feasible within the time constraints of this targeted review exercise, were considered to have drawbacks that outweigh the potential advantages. The analysis conducted of some other possible approaches is included in Section 4.1.6. This analysis is without prejudice to other approaches that could be considered in a more comprehensive review of the PRIIPs framework, which is expected to be conducted in the coming years.

Information on past performance

Non-structured UCITS currently present information about their past performance as part of the KII. Both trade bodies and stakeholders representing consumers have argued as to the relevance of such information and criticised its absence from the PRIIPs KID. Taking into account this feedback, as well as the possible expiry of the exemption in Article 32 of the PRIIPs Regulation, the ESAs have considered if and how information on past performance could be included in the PRIIPs KID.

While past performance is not a guide to future performance, it can be seen as relevant to illustrate the actual behaviour of a product in given market circumstances and to help investors to appreciate the volatility of the returns of the product, as well as the ability of the investment manager. In addition, since the current performance scenarios methodology in the KID uses information on past performance to simulate possible future returns, this information could complement the current scenarios and enable investors to better understand the range of possible returns displayed in the future performance scenarios.

Given that one of the principal aims of the KID is to allow for comparison between different types of PRIIPs, were information on past performance included in the KID, it is important to aim to do so for all types of PRIIPs. At the same time, it is recognised that actual past performance information does not exist for some types of PRIIPs, as well as that a defined methodology is needed to determine how past performance information should be shown to ensure that the information presented in the KID would be consistent and comparable. Consideration may also need to be given to the interaction between the duration of the past performance information included and the recommended holding

period used for the future performance scenarios, in particular for long-term PRIIPs or those with so-called "lifestyle" investment strategies that change over time, as well as to ensure that coherent information would be presented on the costs taken into account in the different performance information.

In addition, it is recognised that for PRIIPs other than non-structured UCITS there are likely to be material implementation costs to including information on past performance and adequate time would be needed to implement this change (see Section 5 for further consideration of this). In this respect, it could be considered whether the inclusion of past performance information for different types of PRIIPs could be done in stages. This is linked to the timing of the more comprehensive review of PRIIPs.

More specifically, actual past performance does not exist for structured UCITS or other structured PRIIPs[18]. This includes, amongst others:

- Products, such as structured notes, that are marketed during a defined period of time (subscription period) and have, at the date of the issuance, no price history as such;

- Products that are issued and cancelled or redeemed following a relatively short period of time, which means that no price history is available that could compare with the time horizon currently used for UCITS (i.e. 10 years);

- Products, such as contracts for difference, for which there is no price for the instrument other than the quote of the underlying, but rather a minimum margin that is required.

For these types of PRIIPs, values based on the past performance of the underlying assets can be used to "simulate" the past performance, but it can be argued that this information is of less relevance to the investor. Such a simulated approach could entail:

- The use of historical prices of the underlying assets to replicate the pay-off of the product simulating a new issuance of the product on a daily basis going back for a certain period of time. This implies that data of the underlying assets is available for a period that covers the maturity of the product, which could be an issue for certain specific underlying assets. In addition, this simulation approach would imply a series of assumptions to be made, which may not be straightforward for certain types of products;

- Instead of simulating the past performance of the product itself, the history of the price of the underlying assets could be shown for products for which the performance depends on underlying assets. This is a common practice in marketing material in certain Member States. This approach is simple to implement, but does not reflect the features of the product and therefore can be seen as providing less pertinent information to investors.

[18] Structured products and structured UCITS are composed of investments with a fixed time horizon and where the elapsed time is a component of the value. Because time is a factor in the value of the investment, the daily price changes reflect both the passage of time and the change in value due to changes in market condition. For this reason, price histories of structured products and structured UCITS are arguably less reflective of the range of outcomes available to the investor at a particular instance of time.

For insurance-based investment products[19] (IBIPs) similar issues may arise, for example in relation to PRIIPs offering a range of options for investment (or multi-option products / MOPs) that offer structured UCITS or other structured PRIIPs as investment options. Performance for IBIPs is also linked to biometric criteria. For PRIIPs where the performance depends on a factor or factors unobserved in the market or to some extent under the control of the PRIIP manufacturer (Category 4[20] PRIIPs), the PRIIP manufacturer will need to have information on past performance based on the returns allocated or paid out. However, depending on the type of product[21], a number of assumptions may need to be taken in order to produce past performance information. In this case a defined methodology or specific criteria would need to be developed for the information to be comparable.

Taking the above into account, the ESAs would propose to include information on past performance in the KID whenever it is available. While this may mean that past performance information is not included for all PRIIPs, this is in line with the current approach in the UCITS KII used for new non-structured UCITS in accordance with Commission Implementing Regulation (583/2010)[22] (hereinafter "UCITS Regulation 583/2010"). In terms of the aim of comparability, there would also continue to be information on possible future performance scenarios for all PRIIPs.

At a minimum it is considered to be possible to include information on past performance in the KID for non-structured collective investment schemes (CIS), for MOPs in relation to underlying investment options that are non-structured CIS[23] (i.e. category 2 PRIIPs), and for other category 2 IBIPs.

In these cases, it is proposed to take the approach in the UCITS KII as a basis where information is presented in the form of a bar chart covering performance over the last 10 years, subject to a number of conditions. Legislative text specifying the presentation of past performance would be based on the existing provisions in UCITS Regulation 583/2010. The relevant specific provisions that would be incorporated into the PRIIPs Delegated Regulation are discussed in Section 4.3 of this consultation paper below.

For PRIIPs where actual past performance does not exist, based on the feedback received to this consultation on the use of simulated past performance, the ESAs will consider the nature of any legislative provisions on the inclusion of information on past performance for these types of PRIIPs within the final RTS.

The inclusion of information on past performance entails changes to the presentation of the performance scenarios and to the KID template. Information on past performances could be displayed in the current sub-Section of the KID template for "Performance Scenarios" as part of the Section "What are the risks and what could I get in return?". Additional sub-headings could be added to clearly

[19] As defined in Article 4(2) of the PRIIPs Regulation.

[20] The specification of PRIIP categories is for the purposes of the MRM and is set out in Annex II, Part I, Points 3-7 of the PRIIPs Delegated Regulation.

[21] For example, if it is a unitised or non-unitised with-profits insurance contract.

[22] COMMISSION REGULATION (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website

[23] For MOPs, where the approach set out in Article 10(a) of the PRIIPs Delegated Regulation is used the information would be included in the KID. Where the approach set out in Article 10(b) of the PRIIPs Delegated Regulation is used ("generic KID"), the information would be included in the specific information on the underlying investment option in accordance with Article 14(c).

distinguish between this information on past performance and the information on potential future performance.

1.	**Do you agree that information on past performance should be included in the KID where it is available?**
2.	**Are there challenges to include past performance information for certain types of PRIIPs?**
3.	**Do you agree that it is appropriate for this information on past performance to be based on the approach currently used in the KII? If not, please explain your reasons and if an alternative presentation would be more appropriate and for which types of PRIIPs?**
4.	**Do you think that information on simulated past performance should be included in the KID where actual past performance is not available? If not, please explain your reasons.**
5.	**If you think that information on simulated past performance should be included in the KID, what approach do you think should be used to simulate the past performance, and how should this be presented in the KID?**

Amendments to the narrative explanations

The current narrative explanations in Annex V of the PRIIPs Delegated Regulation are intended to manage retail investors expectations as to the likelihood of receiving the possible returns presented. As stated in the Final Report published by the ESAs to the original RTS in 2016, 'the aim in this approach [to performance scenarios] is to show the spread or range of outcomes, and not give undue certainty to these outcomes'[24]. In this respect, in the current narratives the conditional tense is used, as well as the terms "estimate" and the statement that the scenarios are not an "exact indicator".

The concerns referred to earlier in Section 4.1.3 that have been expressed following the implementation of the KID, suggest that the current narrative explanations may not be conveying the intended messages as clearly as they should do. It can be noted that one of the main findings from the survey conducted by an NCA referred to above in Section 4.1.4, was that the inclusion of the current narrative explanations in the performance scenarios did not have an impact on the behaviour of retail investors. This could indicate that the current explanations in KID are not appropriately presented or worded[25].

In view of this, the ESAs would propose to:

- Include a more prominent statement that the scenarios are based on simulations, comparable to the warning that is currently used in the KII in relation to the relevance of information on past performance;

[24] See JC 2016 21 (Final draft RTS PRIIPs KID report), page 7

[25] It is acknowledged that this finding could also be a reflection of the fact that retail investors disregard such information or explanations in general.

- To shorten the narrative explanations and highlight the key messages in bold.

This would entail amendments to Annex V of the PRIIPs Delegated Regulation, including:

- A new paragraph setting out the heading to be used for the future performance scenarios along the lines of:

  Above the table the following heading shall be used: 'Simulated future performance'. Below the heading it shall be stated in bold letters, 'Market developments in the future cannot be accurately predicted. These scenarios are only an indication of the range of possible returns'.

- Amendments to narrative explanations Elements A to D to be replaced with text along the lines of:

  This table indicates how your investment could perform over the next [recommended holding period] years in different market circumstances, assuming that you invest EUR […] [per year]. [These are estimates based on relevant data from the past [x] years and does not take into account the situation where we are not able to pay you.] [Where applicable] (Where x is the number of years of underlying data used for the performance scenario calculations.) (Where applicable reflects that this narrative would not be applicable for certain PRIIPs, such as those falling within Annex II, Point 4(c)),

6.	**Do you consider these amendments to the narrative explanations to be an improvement on the current performance scenario approach?**

Example presentation of amended performance scenarios

This sub-section sets out how the performance scenarios would be presented based on the proposed amendments. It includes an example to illustrate the implications on the presentation in the KID. The example shows what would be included in the 'Performance Scenarios' sub-section of the KID within the Section 'What are the risks and what could I get in return?'.

The presentation of past performance is based on the current presentation in the UCITS KII. The presentation of potential future performance takes Template A in Part 2 of Annex V of the PRIIPs Delegated Regulation for single investment paid as a starting point.

The example is for a non-structured CIS. In terms of other types of PRIIPs:

- The presentation of past performance could also apply to other types of PRIIPs that have available past performance, (for example non-structured CIS that are offered within a MOP in terms of the information to be provided within the KID or the specific information on the underlying investment option), subject to the feedback from this public consultation.

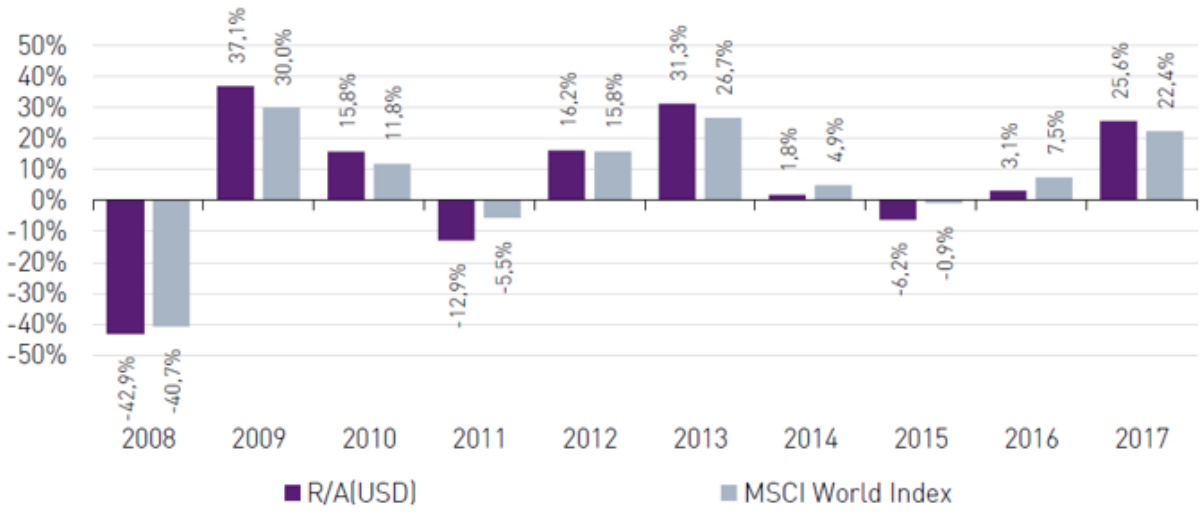
- The presentation of potential future performance would in general apply as shown for all PRIIPs.[26]

[26] This is subject to certain specifications or exceptions, for example depending on whether it is single or regular payment PRIIP; equally if it is an IBIP there would be an insurance scenario, or if it is an option or future traded on a regulated market, a pay-off structure graph would be used.

Performance scenarios

Actual Past Performance

Past performance is not a guide to future performance



The chart shows the Fund's[27] annual performance in US Dollars for each full calendar year over the period 2008-2017. It is expressed as a percentage change of the Fund's net asset value at each year-end. The Fund was launched in 2006. Performance is shown after deduction of ongoing charges but entry costs and exit costs are not deducted in this chart.

Simulated future performance

Market developments in the future cannot be accurately predicted. These scenarios are only an indication of the range of possible returns

Investment ☐				
Scenarios		**1 year**	**[3] years**	**[5] years** (Recommended holding period)
Stress scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Unfavourable scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Moderate scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐
Favourable scenario	**What you might get back after costs**	☐	☐	☐
	Average return each year	☐	☐	☐

This table indicates how your investment could perform over the next 5 years in different market circumstances, assuming that you invest 10.000 EUR. These are estimates based on relevant data from the previous 5 years, and does not take into account the situation where we are not able to pay you. The figures shown include all the costs of the product itself and include the costs of your advisor or distributor. The figures do not take into account your personal tax situation, which may also affect how much you get back.

[27] This past performance information is for a UCITS share class. The anonymised name "R/A (USD)" is used.

4.1.6 Analysis of other potential options

This sub-section describes the main alternative options that the ESAs identified during this targeted review work regarding possible changes to the methodology and presentation of the future performance scenarios. These options could be combined with the inclusion of information on past performance where available and similar amendments to the narrative explanations to those discussed in the previous Section 4.1.5.

Future performance scenarios anchored in the risk-free rate of return

This option involves a change to the methodology to derive future performance scenario figures. The expected performance for the assets underlying a PRIIP would be the risk neutral expectation based on the expected values of interest rates and all relevant cash flows[28].

Such a change was previously considered by the ESAs when preparing a response to the European Commission in December 2016 to their intention to amend the RTS originally submitted by the ESAs[29]. Using this approach, in particular for the moderate performance scenario, this should remove the risk that the future performance scenarios are, due to particularly positive or negative performance observed during the past 5 years, at a level which could be claimed to be misleading in view of the market expectations at a given time. The ESAs have done some analysis which indicates that the risk-free rate of return has a positive correlation with observed performance[30]. The risk-free rate also has a term structure and gives a market expectation for interest rate evolution.

However, a drawback of this approach is that it is unlikely to capture all relevant factors that impact a product's performance, in particular the risk premium of a particular asset. This is particularly the case for PRIIPs with longer recommended holding periods. Therefore, this can be seen to impair the usefulness of the information provided to investors and their ability to compare between different PRIIPs. In addition, while the use of the risk-free rate of return could be combined with the inclusion of information on past performance, it is considered to be less complementary in this case, due to the potential discrepancy between the past performance information and the projections under the moderate scenario.

This option would entail amendments to at least Annex IV of the PRIIPs Delegated Regulation. These would include:

- In Annex IV point 9, the term M1*N in the formulae would need be replaced. The amendment would be to a provision along the lines of "$E[r_{risk\text{-}free}]$ T ± Other Factors" where:

[28] This is expected to apply where the future performance simulations are based on historical prices. PRIIPs that fall within Article 3(5) of the PRIIPs Delegated Regulation would continue to include performance scenarios in the form of pay-off structure graphs.

[29] ESAs-2016-81 Joint Letter on RTS on PRIIPs.

[30] This is based on analysis of several major indices, looking at the relationship between the expected risk-free rate of return for a 5 year period (prediction) and the observed performance over the same 5 year period (actual)).

- $E[r_{risk\text{-}free}]$ is the expected risk-free interest rate over the recommended holding period;
- T is the length of the recommended holding period in years; and
- Other Factors captures any other feature of the product which is known to impact the risk-neutral expectation e.g. an equity UCITS which does not credit the dividends to unit holders would subtract the expected value of dividends.

- Point 12 of Annex IV would be amended, including to delete point (b);
- Points 15 and 18 of Annex IV (Category 4 PRIIPs and Category 1 PRIIPs as defined in point 4(c) of Annex II), would probably need to be amended, for example to ensure conservative assumptions which are consistent with the risk neutral expectation for other types of PRIIPs were used.

Amended approach and presentation for future performance scenarios to highlight the range of outcomes

As stated above on page 15, the notion of providing an indication of the possible range of returns to the retail investor is already a guiding principle of the performance scenarios within the PRIIPs Delegated Regulation - this is stated in Annex IV, Point 1.

Consideration has been given to the types of changes that could ensure that this notion would be appropriately prominent to the retail investor. In particular, an analysis has been done of the possible benefits of limiting the presentation to two future performance scenarios. This could be done by only including the favourable and stress scenarios in the future performance scenarios in a manner that indicates a range of possible outcomes resulting from the model simulations, and including more than 90% of simulated returns. In this case, the moderate and unfavourable scenarios would no longer be calculated or presented in the KID. Such a change would entail at least the following amendments to the PRIIPs Delegated Regulation:

- An amendment to Article 3(3) specifying the four performance scenarios;
- An amendment is expected to be necessary to Article 15(2)(c) concerning the review of the KID, which refers to a change in the moderate scenario;
- Annex IV would need to be amended in relation to the provisions concerning the moderate and unfavourable scenarios;
- Annex V would need to be amended to:
    - Change the Templates A and B in Annex V, Part 2, which currently include the four different scenarios;

- Include a new paragraph setting out the headings to be used for the future performance scenarios along the lines of:

  Above the table the following heading shall be used 'Simulated future performance'. Below the heading it shall be stated in bold letters 'Market developments in the future cannot be accurately predicted. These scenarios are only an indication of the range of possible returns'.

- Amend the narrative explanations Elements A to D to be replaced with text along the lines of:

  This [table/graph] presents the range of possible outcomes over the next [recommended holding period] years defined on the basis of the performance of financial markets over the previous [x] years (where x is the number of years of underlying data used for the performance scenario calculations)] assuming that you invest EUR […] [per year]. ***What you will actually get back will depend on how the product performs in the future. [Actual future performance could be lower than described in the stressed environment*** *[in bold] or higher than described in the favourable environment] [Where applicable depending on the features of the product].*

This approach could be combined with the inclusion of information on past performance, where available (see Section 4.1.5).

The rationale for this approach is that the use of more (i.e. four) scenarios could inversely lead investors to believe that only a limited number of outcomes are possible. A secondary factor is that, if presented with a moderate scenario, investors may assume that this moderate scenario reflects the most probable outcome. Such a change is likely to minimise the risk that the level of the future performance scenarios can be claimed to be misleading in view of the market expectations at a given time.

However, a number of material drawbacks have also been identified:

- Questions were raised as to whether this would be a viable option for Category 1 PRIIPs as defined in Annex II, point 4(c) of the PRIIPs Delegated Regulation, since for these products only four estimates are made rather than a multitude of possibilities on the basis of a random simulation;

- This approach will reduce the information given to investors, and may make it more difficult for investors to assess the likelihood of the different outcomes[31]. This approach may also not adequately reflect the possible range of outcomes for certain types of products, for example structured products with a specified number of discrete pay-offs, or for products with guarantees or discretionary profit participation.

As part of the analysis of this issue, consideration has been given to whether it would be more appropriate to present the future performance scenarios in the existing table in a modified form (i.e. with the removal of two scenarios) or using a graph, as the latter could further emphasise the idea of a range. Examples of how this option could be presented, using either a table or a graph, are included as an Annex in Section 6.

[31] See Section 4.1.4 of this consultation paper on Consumer Testing outcomes and the challenges identified for consumers in this respect.

If a graph approach would be used at least the following additional amendments are expected to be necessary:

- To specify the features of the graph including that the scale of the graph shall be fair, clear and not misleading. This could entail changes to Annex IV and Annex V;

- To Annex V, Part 2 regarding the presentation of performance scenarios including the need for new Templates.

When considering the use of a graph, the ESAs referred back to the consumer testing study that was done during the development of the original RTS. While there were 'mixed consumer testing results on whether the presentation of performance scenarios as a table or a graph would be most effective' [32], one of the main findings from the first phase of the consumer testing was that 'more complex graphical designs (showing a "funnel of doubt" or a probability histogram) did not perform as well as simpler graphics which incorporated either a table or a line graph'[33]. It is debatable whether the type of graph that would be used to show the range of outcomes according to this option would constitute a "simple" graph (see the example in Section 6).

Overall, while such amendments (either using a table or graph) are considered to have merits, there are considered to be material drawbacks to making such a change within the timeframe possible for this targeted review, most notably the absence of time to conduct further consumer testing, in particular if a graphical presentation was to be used.

Extend the historical period used to measure performance

Another option considered has been to extend the historical period used to measure performance from 5 years to 10 years. This would entail a change to the time periods specified in various points in Annex II of the Delegated Regulation (e.g. Points 5 and 6).

Such an approach, if introduced now, is expected to reduce current expectations for returns, in particular under the moderate scenario. This is due to the inclusion of the performance during the financial crisis (2008-2009). However, it does not resolve the issues described above in Section 4.1.3 related to potentially overly positive expectations as to future returns, or undue 'pro-cyclicality' since market cycles can also last 10 years or more. In particular, were this change to be introduced in 2020 and in the absence of a significant downturn in financial markets prior to that, the impact is likely to be limited since the crisis period would no longer be included in the 10 year historical period. A

[32] When consulting on draft RTS the ESAs asked stakeholders for their feedback on their preferences on the use of a table compared to a simple graph; see JC 2015 073 (Joint Consultation paper on PRIIPs KID), page 11 where Question 15 stated: '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?'. Mixed feedback to this question was received.

Further, in the Final RTS, the ESAs separately noted that the graphical presentation of the information was deemed to be sometimes more effective in communicating what possible returns could be expected in a certain scenario at a certain time - see JC 2016 21 (Final draft RTS PRIIPs KID report), page 101.

[33] Executive summary – Consumer testing study of the possible new format and content for retail disclosures of packaged retail and insurance-based investment products MARKT/2014/060/G for the implementation of the Framework Contract n EAHC-2011-CP-01, page 4.

lengthening of the historical period used also reduces the number of products for which data will be available for the whole period. Overall, this option was not considered to bring material improvements to the methodology that outweigh its drawbacks.

7.	**Do you have any comments on the analysis set out in this Section of other possible options to improve the future performance scenarios?**
8.	**Do you have any views on how the presentation of the performance scenarios could otherwise be improved?**

4.1.7 Ongoing work by the ESAs to assess market practices related to the performance scenarios

The ESAs are aware that some PRIIP manufacturers have decided to supplement the information in the KID on the basis that the performance scenarios may be seen to provide too positive potential returns to retail investors in the current environment. While this may have been done with a view to protecting investors, some of these practices themselves raise supervisory concerns in terms of their compliance with the KID template and the extent to which they contradict rather than complement the other information in the KID. Given that any amendments to the current performance scenarios would not be applicable until 1 January 2020, the ESAs consider that it is appropriate in a next step to communicate its views on these practices in order to promote appropriate and consistent approaches prior to 2020. The ESAs will consider whether it is appropriate to address this issue in its Final Report on this RTS following the public consultation, or via a separate communication.

4.2 Other specific amendments

In the letter sent by the ESAs to the European Commission on 1 October it was stated, in relation to the issues that the ESAs expected to examine as part of this work, that:

> *consideration will be given to the need for other targeted amendments, in particular taking into account where issues have been addressed in Q&A published by the ESAs.*

This section considers the relevance of other specific amendments based on the information gathered by the ESAs since 1 January 2018 on the practical experiences of applying the KID requirements to specific types of products and technical issues that have arisen.

Based on the analysis conducted so far, the ESAs consider that amendments to the Delegated Regulation may be necessary in order to achieve the desired outcomes on the issues described in this section. However, given the time constraints for this targeted review, as well as the priority to be given to the amendments to the performance scenarios, the ESAs will consider further the nature of any possible amendments to the PRIIPs Delegated Regulation. It could be decided, for instance, to make only very minor amendments to the PRIIPs Delegated Regulation and to supplement these changes with a level 3 measure, such as a Q&A, in order to clarify the application to specific types of PRIIPs and promote consistent approaches.

In the meantime, feedback is requested from stakeholders on whether the policy solutions being considered for the issued raised below are appropriate.

4.2.1 Market risk measure (MRM) calculation for regular investment or premium PRIIPs

The MRM is part of the calculation to determine the summary risk indicator (SRI) which is included in the section of the KID 'What are the risks and what could I get in return?'. It is based on the volatility of the returns of the PRIIP or a relevant benchmark or proxy. The other main component of the SRI is an assessment of the credit risk of the PRIIP.

It has been commented by trade bodies representing PRIIP manufacturers that the PRIIPs Delegated Regulation only provides a calculation method for the MRM for single investment or premium products and that there is uncertainty regarding the approach to be used for PRIIPs with regular investor payments, such as regular premium IBIPs or fund-based saving plans.

It is acknowledged that the current MRM formula for Category 2 PRIIPs cannot be applied where the invested amount accumulates over time. In contrast, the Category 3 PRIIPs methodology enables the required percentiles to be estimated, but it requires a bootstrapping simulation to be undertaken[34]. This can be seen as burdensome where a product offers non-leveraged exposure to underlying investments. While there are some differences in the risk profile between single and regular payment products, it can be argued that a broadly consistent approach should be taken between the same products offered in single or regular payment form.

[34] Points 16-23 of Part 1, Annex II of the PRIIPs Delegated Regulation.

Taking this into account, a specific amendment is being considered such that where a product would be a Category 2 or Category 3 PRIIP based on a single investment or premium, it should also be treated in an equivalent manner (i.e. the same PRIIP Category) when there is a regular payment schedule. This would entail an adaptation of the formula for calculating the VaR-Equivalent Volatility (VEV)[35].

For Category 2 PRIIPs the MRM formula does not enable the percentiles for the return distribution to be estimated where the invested amount accumulates over time since the Cornish Fisher[36] approach is based on a two phases model only. In addition to an adjustment to the VEV calculation, an adaptation to the distribution function for the Category 2 PRIIP methodology is required to appropriately capture regular payments. The methodology in Annex II, Part 1 of the PRIIPs Delegated Regulation could be clarified or adjusted for PRIIPs that are characterised by ongoing payments as set out below.

Category 2 PRIIPs

The calculation of the VEV for determining the risk class under Annex II, Part 1, section "MRM class determination for Category 2 PRIIPs" of the PRIIPs Delegated Regulation would be as follows:

- Apply the following adapted distribution function for generating the necessary 10.000 paths and the corresponding percentiles:
    - Between time steps t and t+1 choose a random number alpha in [0, 1], calculate a 1 year yield distribution value that corresponds to the quantile alpha between t and t+1 applying the Category 2 Cornish Fisher methodology;
    - Add the next ongoing payment and repeat the procedure between t+1 and t+2.
- Replace "VaR_RETURNSPACE" in the formula in Point 13 by "$T \cdot r$", where r is defined as the annualised return of the PRIIP which results for the PRIIP pay-out according to the 2.5% quantile of the distribution of the pay-out at the recommended holding period.

Category 3 PRIIPs

The calculation of the VEV for determining the risk class under Annex II, Part 1, section "MRM class determination for Category 3 PRIIPs" of the PRIIPs Delegated Regulation would be as follows:

- Replace "ln(VaR_PRICESPACE)" in Point 17 by "$T \cdot r$" where r is the annualised return of the PRIIP which results for the PRIIP pay-out according to the 2.5% quantile of the distribution of the pay-out at the recommended holding period.

The performance scenario methodology is based on the MRM calculation. However, some additional specifications may be needed to clarify the application in the context of the performance scenarios.

[35] Market risk is measured by the annualised volatility corresponding to the value-at-risk (VaR) at a confidence level of 97,5 % over the recommended holding period (Annex II, Part 1, Point 1 of PRIIPs Delegated Regulation). This is deemed the VEV.

[36] As required by Annex II, Part 1, Point 12 of the PRIIPs Delegated Regulation.

4.2.2 Products with an autocallable feature

The main feature of autocallable products is that they end at different times depending on market circumstances. As part of the calculation of the SRI it is indicated that the effective holding period should be used to calculate the VEV, which is an annualised figure, instead of the recommended holding period[37]. However, the implications of this feature are not currently addressed within the existing general rules in the KID regarding the presentation of performance scenarios at different holding periods.

The ESAs have also observed different practices by PRIIP manufacturers. In some cases, all the columns in the performance scenario table (i.e. covering different holding periods) are filled with figures, showing performance for holding periods after the product has been called or repeating the figures if the product is called at one intermediate period[38]. In other cases, clarifications have been added by manufacturers to the performance scenarios template, e.g. footnotes indicating the effective holding period, or an additional column indicating the duration of each scenario. Additionally, not all manufacturers highlight in the relevant descriptions in the KID the autocallable nature of the product, and the uncertainty about the PRIIP's duration in the section 'How long should I hold it and can I take my money out early?' (Article 6 of the PRIIPs Delegated Regulation).

Some specifications to the performance scenario tables and accompanying narratives are therefore proposed so as to facilitate the understanding of this product feature by the retail investor, and ensure consistent approaches by PRIIP manufacturers. These specifications would apply to all products that may be called or cancelled before the recommended holding period when certain objective conditions are met.

The proposed approach is that where the product is called or cancelled before the end of the recommended holding period according to the simulation, performance would only be shown at the intermediate holding periods up to the call or cancellation and the effective holding period should be used to calculate the average annual return. Further, where the product is called or cancelled according to the simulation at a time which does not coincide with an intermediate holding period, the performance at the call or cancellation date would be shown at the subsequent holding period.

Specific narrative explanations would be relevant to accompany the performance scenarios tables in order to clarify the assumptions used and inform the retail investor of the end date of the product in each scenario.

An example of the performance scenario table and additional narrative explanations to illustrate the intended approach is included below.

[37] Annex II, Part 1, Point 17 of the PRIIPs Delegated Regulation.

[38] For example, a product with a recommended holding period of 3 years, but which is called at year 1 may show the same figures under "1 year" and under the "Recommended holding period".

Investment [ ]				
Scenarios		**1 year**	**[3] years**	**[5] years (Recommended holding period)**
Stress scenario	**What you might get back after costs**	X €	X €	X €
	Average return each year	-X %	-X %	-X %
Unfavourable scenario	**What you might get back after costs**	X €	X €	X €
	Average return each year	-X %	-X %	-X %
Moderate scenario	**What you might get back after costs**	X €	X €	
	Average return each year	X %	X %	
Favourable scenario	**What you might get back after costs**	X €		
	Average return each year	X %		

In the stress and unfavourable scenarios the product reaches the recommended holding period (5 years)
In the moderate scenario the product ends at year 2. The performance shown under 3 years shows what you might get when the product ends at year 2.
In the favourable scenario the product ends at year 1.

There is also a link to the presentation of costs over time (Table 1 in Annex VII of the PRIIPs Delegated Regulation) where costs are shown at intermediate holding periods (where applicable) and the recommended holding period. For the presentation of costs, the preliminary assessment of the ESAs, is that it would be relevant to assume that the product is held until the recommended holding period, with a view to ensuring that the retail investor is aware of all of the potential product costs.

4.2.3 Narratives for the Summary Risk Indicator

Trade bodies representing manufacturers of PRIIPs have expressed concern that the SRI, in isolation, may be misleading. It is recognised that the SRI may not capture all material risks of the PRIIP and in this case the PRIIP manufacturer is required, in accordance with point 4(b) of Annex III of the PRIIPs Delegated Regulation, to add a narrative explanation to specify these risks (Element E). Specifically, as the SRI methodology is based on a measure of average price movements observed over relatively long periods of time, it is insensitive to rare but large movements in value.

However, these trade bodies have indicated that there is reluctance amongst PRIIP manufacturers to provide additional explanatory text where the SRI is considered to not adequately capture material risks – both due to uncertainty on what could be mentioned and the limit on the length of the message to 200 characters. As a result, the ESAs propose to modify the invitation for additional text to extend the length to 300 characters. It could also be relevant to include an example of what could be stated, such as 'The price of this product may be subject to infrequent but large changes', but it may be more appropriate to address this via Q&A.

Furthermore, the ESAs intend to propose a minor technical amendment that the warning in Annex III, Point 3(a) of the PRIIPs Delegated Regulation that the risk can be considered to be significantly higher if the holding period is different, is only applicable for PRIIPs where the SRI is 6 or less.

4.2.4 Narrative for performance fees – composition of costs table

The ESAs have received feedback from trade bodies representing PRIIP manufacturers that the current prescribed narrative text to be used to disclose the nature of any performance fees does not allow the range of different performance fee structures to be appropriately reflected. The current text of the narrative states[39]:

> *The impact of the performance fee. We take these from your investment if the product outperforms its benchmark [y by x%].*

Some examples of the type of structures that have been identified as not being fully compatible with the current narrative text include arrangements where:

- The performance fee is expressed in relation to a reference that is not defined as a "benchmark" of the fund for any other purpose;
- Funds that pay performance fees when the fund has positive performance, sometimes over a certain level, and not linked to a particular reference or benchmark.

In view of this, some more flexibility could be added to the current prescribed text. Although the current prescriptive approach aims to ensure comparability and prevent misleading information being provided, this practical implementation experience would suggest that such an approach also risks misinforming investors given the wide range of different arrangements. Since this item should be a factual description of a specific feature of the product, this limited degree of flexibility should not lead to a material risk in terms of reduced comparability or misleading information being provided.

If the narrative were to be amended, it could be changed to: "The impact of the performance fee. We take these from your investment if *[insert a brief explanation of the conditions under which performance fees are charged with a of maximum 100 characters in plain language]"*

4.2.1 Growth assumption for the reduction in yield (RIY) calculation

An amendment is considered to be appropriate linked to a Q&A published by the ESAs in July 2018 concerning the RIY cost calculation. This concerns Question 4 in the Section V of the Q&A document "Calculation of the summary cost indicators (Annex VI, Part 2)" which is: *If the moderate scenario shows a total loss of capital or even a negative return, should this be used to present the costs, in which case the Reduction-in-Yield would suggest no or very low costs?*

[39] This is included in Table 2 Composition of costs within Annex VII of the PRIIPs Delegated Regulation

In order to provide for a consistent approach for all PRIIPs, as well as taking into account feedback from trade bodies representing PRIIP manufacturers that there are additional cases to those covered by the Q&A where the RIY shows very low costs due to the use of the moderate scenario outcome, it is proposed that for the calculation of the RIY the assumption that the performance shall be 3% should be applied to all PRIIPs, instead of the use of the moderate scenario. This amendment may also increase comparability among products as costs would be less dependent on the performance estimations. This change would entail amendments to Point 71 of Annex VI of the PRIIPs Delegated Regulation.

4.2.2 Other minor amendments

The ESAs also intend to use the opportunity of proposing amendments to the PRIIPs Delegated Regulation to clarify or correct minor technical or specific issues. This would include for example that, despite the requirement in Article 5(2) of the PRIIPs Delegated Regulation, there is currently no heading in the KID Template for the "Term" of the product in the section "What is this Product?". The ESAs will include such amendments in the final version of the RTS.

9.	**Do you agree with the proposals described in this section?**

4.3 Amendments arising from the possible end of the exemption in Article 32 of the PRIIPs Regulation

This section considers whether changes are needed to the PRIIPs Delegated Regulation specifically in view of the possible end of the exemption in Article 32 of the PRIIPs Regulation.

To start with, several provisions in the PRIIPs Delegated Regulation concerning PRIIPs offering a range of options for investment are directly linked to the exemption for UCITS and relevant non-UCITS funds. Therefore the expiry of that exemption would necessitate the deletion of these provisions in Articles 12, 13 and 14 of the PRIIPs Delegated Regulation.

The remainder of this section discusses the extent to which parts of the UCITS Regulation 583/2010 should be included in the PRIIPs Delegated Regulation, subject to any decision by the co-legislators on whether UCITS and relevant non-UCITS funds would be required to provide retail investors with a PRIIPs KID from 1 January 2020.

4.3.1 Background

The level 2 UCITS Regulation 583/2010 is composed of the following chapters:

- General principles (Chapter I – Articles 1 to 3);
- Form and presentation of the KII (Chapter II – Articles 4 to 6);
- Contents of the sections of the KII (Chapter III – Articles 7 to 24);
- Particular UCITS structures (Chapter IV – Articles 25 to 37);
- Durable medium (Chapter V – Article 38).

The subsequent parts of this section of the consultation paper consider, chapter per chapter of the UCITS Regulation 583/2010 (except chapter V), which of these articles or parts of articles of the UCITS Regulation 583/2010 could be equally relevant in the context of this revision of the PRIIPs Delegated Regulation.

The criteria used to select those articles or parts of articles of the UCITS Regulation 583/2010 that could be included are the following:

- Whether the requirements of the UCITS Regulation 583/2010 are already covered (identical or similar requirements) in the PRIIPs Regulation or Delegated Regulation (e.g. all requirements on the UCITS risk and cost indicators would not be retained in a PRIIPs context);
- Whether the requirements of the UCITS Regulation 583/2010 are relevant in the context of the amendments envisaged to the PRIIPs Delegated Regulation as part of this CP, namely related to the inclusion of information on past performance;

Finally, the ESAs have also considered whether some of the requirements of the UCITS Regulation 583/2010 that would be relevant to be included in the PRIIPs Delegated Regulation would need to be extended to other PRIIPs, such as retail AIFs (funds covered by the AIFM Directive[40]), and when this extension should be implemented (i.e. in the context of this targeted review or in the context of a wider review). When reviewing this section, stakeholders are also invited to comment on this issue.

According to the UCITS Directive (Article 78), the UCITS KII currently needs to be provided not only to retail, but also to professional investors. Given that the PRIIPs Regulation applies to products made available to retail investors, the ESAs have worked under the assumption that should UCITS be required to provide a PRIIPs KID to retail investors the UCITS KII may still be provided to professional investors. However, this is also subject to any decision by the co-legislators on the exemption in Article 32 of the PRIIPs Regulation.

Please note that all the articles of the UCITS Regulation 583/2010 which are discussed in the following subsections are included in an Annex of this CP (Section 7).

It is also relevant to note from a pure legal drafting standpoint, that if the UCITS Regulation 583/2010 is retained (e.g. for the purpose of professional investors), instead of including the requirements of the UCITS Regulation 583/2010 in the PRIIPs Delegated Regulation, the ESAs could also consider simply cross-referring to those requirements in the PRIIPs Delegated Regulation.

4.3.2 General principles (Chapter I – Articles 1 to 3 of the UCITS Regulation 583/2010)

In relation to this chapter, it is considered whether the specification on the situation in which no management company has been designated (Article 2(2) of the UCITS Regulation 583/2010) should be included in the PRIIPs Delegated Regulation.

If it is considered that the PRIIPs Regulation is already clear that it applies to situations in which no management company has been designated, this specification is not needed in the PRIIPs Delegated Regulation. However, if the legal assessment is that the PRIIPs Regulation does not automatically imply this specification as referred to in Article 2(2) of the UCITS Regulation 583/2010, then this would be needed in the PRIIPs context as well.

If incorporated into PRIIPs, these specifications could be included as they are currently drafted in Article 1 of the PRIIPs Delegated Regulation, under a new paragraph on UCITS.

[40] DIRECTIVE 2011/61/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

4.3.3 Form and presentation of the KII (Chapter II – Articles 4 to 6 of the UCITS Regulation 583/2010)

From this chapter, Articles 4(4), 4(6) and 4(12) of UCITS Regulation 583/2010 have been identified as potentially relevant to include in the PRIIPs Delegated Regulation (Article 4 of the UCITS Regulation 583/2010 is "Title and contents of the document").

The second and third sentences of Article 4(4) of the UCITS Regulation 583/2010 seem to provide information which is complementary to the corresponding articles in the PRIIPs context (in particular Articles 6 and 8 of the PRIIPs Regulation and Article 1 of the PRIIPs Delegated Regulation) and should be included in the PRIIPs Delegated Regulation. In that case, these specifications could be included as they are currently drafted in the Article 1 of the PRIIPs Delegated Regulation, under a new paragraph on UCITS.

However, with respect Articles 4(6) and 4(12), if included in the PRIIPs Delegated Regulation, these Articles might need to be extended to other types of PRIIPs in order to ensure consistency and a level playing field. In that context, it may be preferable to consider the inclusion of these requirements in the PRIIPs Delegated Regulation only when a wider review is carried out and a fuller assessment of their applicability to other types of PRIIPs can be undertaken.

4.3.4 Contents of the sections of the KII (Chapter III – Articles 7 to 24 of the UCITS Regulation 583/2010)

From this chapter, Articles 7, 9, 15 to 19, 20 and 21 of the UCITS Regulation 583/2010 have been identified as those which could be included in the PRIIPs Delegated Regulation.

With respect to Article 7, paragraphs 7(1)(d), 7(1)(e) and 7(2)(a to d) of this Article seem to provide information which is complementary to the corresponding Articles in the PRIIPs context (in particular Article 8 of the PRIIPs Regulation and Article 2 of the PRIIPs Delegated Regulation) and should therefore be included in the PRIIPs Delegated Regulation. If these provisions are retained to be applied by UCITS when preparing a KID, these specifications (or part of them) could be included in the Article 2 of the PRIIPs Delegated Regulation, under a new paragraph on UCITS.

It is to be noted that Article 7(1)(d) is key in relation to the work of ESMA on closet indexing. ESMA has indeed committed significant resources to combatting the practice of closet indexing, which is prohibited by this Article. It is a priority investor protection issue. Failure to include this provision in the PRIIPs Delegated Regulation could risk closet indexing being seen as permissible under the applicable rules.

With respect to the others parts of Article 7, these might need to be extended to other types of PRIIPs in order to ensure consistency and a level playing field. In that context, it may be preferable to consider the inclusion of these requirements in the PRIIPs Delegated Regulation only when a wider review is carried out and a fuller assessment of their applicability to other types of PRIIPs can be undertaken.

With respect to Articles 15 to 19 on past performance, subject to the final decision on whether to include past performance information in the performance scenarios of the PRIIPs KID (please refer to

Section 4.1 of this consultation paper), the abovementioned Articles 15 to 19 are expected to form the basis of comparable requirements that would need to be included in the PRIIPs context as well. However, depending on the types of PRIIPs for which information on past performance would be included in the PRIIPs KID, for example if it was included not only for non-structured UCITS but also for retail AIFs, the abovementioned articles would need to be correspondingly amended or additional provisions may be needed. If incorporated into the PRIIPs Delegated Regulation, these specifications could be included in Article 3 of the PRIIPs Delegated Regulation, under a new paragraph on past performance potentially with the more detailed provisions included in an Annex.

Additionally from this Chapter of the UCITS Regulation 583/2010, the following articles seem to include information which is slightly different, and possibly complementary to the corresponding articles in the PRIIPs context:

- Article 9 (compared to Article 3 of the PRIIPs Delegated Regulation)
- Article 20 (compared, in particular, to Article 8 of the PRIIPs Regulation and Article 3 of the PRIIPs Delegated Regulation)
- Article 21 (compared, in particular, to Article 6(2) of the PRIIPs Regulation).

However these provisions may also be relevant for other types of PRIIPs and might need to be extended to other types of PRIIPs (in particular retail AIFs for Article 20) in order to ensure consistency and level playing field. In that context, it may be preferable to consider the inclusion of these requirements in the PRIIPs Delegated Regulation only when a wider review is carried out and a fuller assessment of their applicability to other types of PRIIPs can be undertaken.

4.3.5 Particular UCITS structures (Chapter IV – Articles 25 to 37 of the UCITS Regulation 583/2010)

From this chapter, Articles 25 to 34 (except Articles 29, 30 and 33), and Article 35 (past performance) of the UCITS Regulation 583/2010 have been identified as relevant for inclusion in the PRIIPs Delegated Regulation. These seem to provide information which is complementary to the corresponding articles in the PRIIPs context and should be included in the PRIIPs Delegated Regulation, given the specificities of the particular UCITS structures which are referred to in these Articles. These specifications could be included in a new Article called “particular UCITS structures” of the PRIIPs Delegated Regulation.

With respect to the Article 35 on past performance of master / feeder UCITS, if it is proposed to include information on past performance in the PRIIPs KID, this provides information is expected to be relevant in the PRIIPs context as well (in Article 3 of the PRIIPs Delegated Regulation).

10.	**Do you have any comments on the proposed approaches in relation to the analysis and proposals in this section?**

5. Preliminary assessment of costs and benefits

5.1.1 Introduction

According to the ESAs' Regulations, the ESAs conduct analysis of costs and benefits when drafting RTS, unless such analyses are disproportionate in relation to the scope and impact of the draft RTS concerned or in relation to the particular urgency of the matter.

Despite the very short time available to conduct the work, as well as the targeted scope of the review, the ESAs consider that it is important to assess the costs and benefits of their proposals, bearing in mind that the main proposals are being developed at the initiative of the ESAs rather than as a result of a legislative or other mandate.

The draft costs and benefits analysis are subject to public consultation. When providing feedback on the potential costs and benefits, please provide data on the scale and extent of these as far as possible.

5.1.2 Baseline

When analysing the potential costs and benefits arising from the proposed options for amending the PRIIPs Delegated Regulation, these have been compared to a baseline scenario of no regulatory intervention taking place. This baseline scenario entails:

- For PRIIPs other than UCITS and relevant non-UCITS funds referred to in Article 32 of the PRIIPs Regulation the continued application of the PRIIPs Regulation and Delegated Regulation;

- For UCITS and relevant non-UCITS funds referred to in Article 32 of the PRIIPs Regulation the implementation of the PRIIPs KID based on the current PRIIPs Delegated Regulation in view of the expiry of the exemption in Article 32 of the PRIIPs Regulation.

5.1.3 Approach

The assessment of costs and benefits focuses on the proposed amendments to the performance scenario methodology and presentation given that the most substantive proposals are made in this area. The amendments proposed in relation to other aspects of the PRIIPs KID are not considered to have a material impact compared to the baseline. In these cases, the amendments are proposed primarily for the purpose of clarification.

5.1.4 Analysis of costs and benefits

General impact of amendments to the KID

Any change to the presentation and content of the KID or the methodologies underpinning it, however targeted, have the potential to result in substantial compliance costs for the industry given that these changes will require:

- The update of IT systems or tools used, in particular where amendments entail changes to the KID template or its overall structure, and potentially require additional data to be sourced;
- PRIIP manufacturers to review and revise the KIDs for the PRIIPs that they continue to market or which continue to remain available to retail investors.

At the same time, the current PRIIPs Delegated Regulation already requires PRIIP manufacturers to review the contents of the KID at least every 12 months. Therefore, in general terms, amendments to the PRIIPs Delegated Regulation to be applicable from 1 January 2020, which would require PRIIPs manufacturers to review and revise the contents of their KIDs during 2019, would not necessarily result in a significant additional burden. This is because it could coincide with the review required by Article 15(1) of the PRIIPs Delegated Regulation and the revision required by Article 16(1). It will, however, depend on the nature of the amendments, and in particular the degree of system change required.

Specific impacts of the policy options that have been considered concerning performance scenarios

The impacts of the following three main options that were considered during the policy development have been analysed:

- Option 1 – present past performance (where available) alongside existing future performance scenarios and amended narrative explanations
- Option 2 - present future performance scenarios anchored in the risk-free rate of return
- Option 3 – present future performance scenarios using a range table or graph

The table on the next page summarises the preliminary analysis of the ESAs regarding the expected costs and benefits of the elements being discussed.

POLICY ELEMENT	BENEFITS	COSTS
INCLUDE INFORMATION ON PAST PERFORMANCE WITHIN THE KID	Retail investors will receive additional information that may be relevant to their decision making. PRIIP manufacturers that see benefit in being able to disclose information about the product's past performance would now be able to include such information in the KID.	Retail investors may unduly rely on past performance information and assume it will be replicated in the future The inclusion of additional information on past performance could mean that it would be more challenging for certain PRIIP manufacturers to comply with the three page limit on the length of the KID. No additional implementation costs identified for PRIIP manufacturers currently producing a KII under the UCITS regulations. For non-structured CIS that do not currently prepare a KII there are considered to be limited implementation (one-off) costs. Where it is not a new CIS, such CIS will have relevant information on past performance and therefore would need to prepare systems to present it in the required format. For structured products or other Category 3 PRIIPs, the implementation costs are expected to be material if it is decided to include information on simulated past performance in the KID. As well as needing to update their internal KID template and systems, additional data may need to be sourced. The information that is used to generate the current performance scenarios in the PRIIPs KID can be applicable to simulate the past performance. However, depending on the methodology that would be used, additional (years of) data may be

POLICY ELEMENT	BENEFITS	COSTS
		needed. For example, a 10 year simulation for a 10 year product may require 20 years of data. Similarly for Category 4 PRIIPs, the implementation costs are expected to be material. As above, changes would be needed to update their internal KID template and systems. While it is expected that PRIIP manufacturers will have the relevant data, there is expected to be implementation costs to appropriately apply a methodology to produce past performance information.
AMEND NARRATIVE EXPLANATIONS FOR PERFORMANCE SCENARIOS	Should result in retail investors receiving clearer information about the nature and limitations of the performance scenarios. PRIIP manufacturers can benefit from retail investors being better informed about the potential rewards from their products (e.g. potential reduced investor complaints).	One-off implementation costs for all PRIIP manufacturers, but considered to be minimal additional costs to those already arising from the at least annual review of the KID.
USE OF THE RISK-FREE RATE OF RETURN RATHER THAN HISTORICAL PRICES TO ANCHOR FUTURE PERFORMANCE SCENARIOS	Should reduce the risk that retail investors acquire unrealistic expectations about what they could get in return. PRIIP manufacturers can benefit from retail investors not having unrealistic expectations about the potential rewards from their products (e.g. potential reduced investor complaints).	Information can be seen as less useful for retail investors to compare between different PRIIPs as does not discriminate between different asset classes. While it should be straightforward for PRIIP manufacturers to implement this change in their systems there could be issues to obtain the relevant market information. For example, for PRIIPs where information on risk-neutral expectations is not already required for the SRI calculation:

POLICY ELEMENT	BENEFITS	COSTS
		• The use of the risk-free rate requires access to a market data provider – which may be difficult for PRIIP manufacturers which are smaller in size; • The risk-free rate may be difficult to source for some products e.g. those based on developing economies.
PRESENTATION OF FUTURE PERFORMANCE SCENARIOS AS A RANGE EITHER IN TABULAR OR GRAPHICAL FORMAT	Retail investors may be better informed regarding the purpose of the scenarios (to show a range of possible returns) and less likely to acquire unrealistic expectations about what they could get in return. PRIIP manufacturers may benefit from retail investors being better informed about the potential rewards from their products (e.g. potential reduced investor complaints).	The approach may not reflect clearly the potential range of outcomes for certain types of PRIIPs. Retail investors may find the graphical presentation difficult to understand. One-off implementation costs for PRIIP manufacturers. If a tabular format is used based on the current future performance scenarios, there are considered to be minimal additional costs to those already arising from the at least annual review of the KID. If a graphical format is used, there will be some additional implementation costs to implement the new template in IT systems.

11.	**Do you have any comments on the preliminary assessment of costs of benefits?**
12.	**Are you able to provide information on the costs of including information on past performance for different types of PRIIPs?**
13.	**Are there significant benefits or costs you are aware of that have not been addressed?**

6. Annex to Section 4.1 - Example presentations of performance scenarios

6.1.1 Introduction

This Annex sets out how the future performance scenarios could be presented for the option described in Section 4.1.6 to amend the approach and presentation to highlight the range of outcomes either using a modified table or a graph. The examples show what would be included in the 'Performance Scenarios' sub-section of the KID within the Section 'What are the risks and what could I get in return?'. The presentation could be combined with information on past performance, which would be included above the future performance scenarios as is shown in the example in Section 4.1.5 of this consultation paper. The examples below are for a non-structured CIS where a single investment is paid. In terms of other types of PRIIPs, the presentation of future performance scenarios would in general apply as shown below. However, some adjustments to the narratives are likely to be needed depending on the specific type of product; for example if there is a guarantee then the stressed scenario would show the lowest outcome.

6.1.2 Modified table for future performance scenarios

Simulated future performance

Market developments in the future cannot be accurately predicted. These scenarios are only an indication of the range of possible returns

Investment 10.000 EUR **Range of possible outcomes**		**1 year**	**[3] years**	**[5] years** **Recommended holding period**
Stressed environment (only 5% of returns simulated were lower)	**Possible returns after costs**	A €	B €	C €
	Average return each year (from investment date)	X %	Y %	Z %
Favourable environment (only 10% of returns simulated were higher)	**Possible returns after costs**	A €	B €	C €
	Average return each year (from investment date)	X %	Y %	Z %

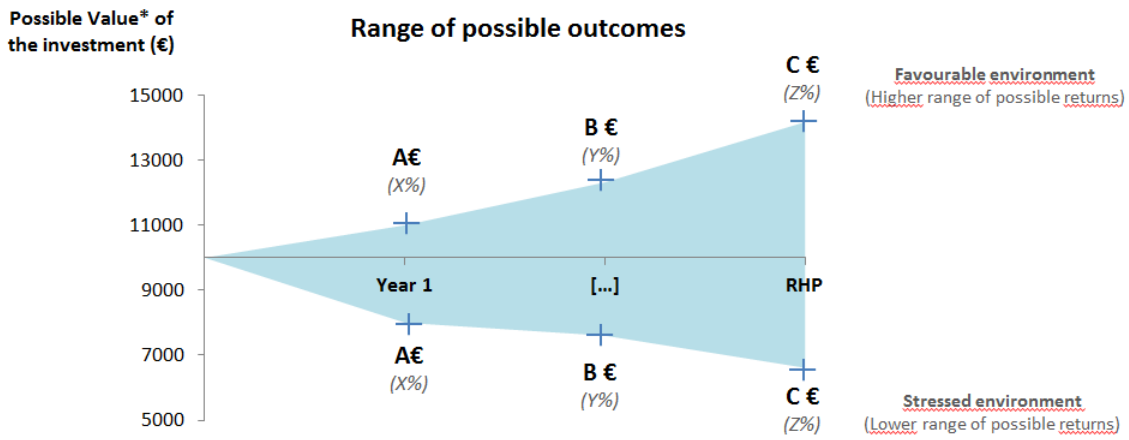
This table presents the range of possible outcomes over the next [recommended holding period] years, assuming that you invest 10.000 EUR, defined on the basis of the performance of financial markets over the previous 5 years. **What you will actually get back will depend on how the product performs in the future. Actual future performance could be lower than described in the stressed environment** or higher than described in the favourable environment.

The figures shown include all the costs of the product itself, and includes the costs of your advisor or distributor. The figures do not take into account your personal tax situation, which may also affect how much you get back.

6.1.3 Graphical presentation of future performance scenarios

Simulated future performance

Market developments in the future cannot be accurately predicted. These scenarios are only an indication of the range of possible returns



Returns are expressed in monetary value (in €) as well as an average annualized rate of return from investment date.

This graph presents the range of possible outcomes over the next [recommended holding period] years, assuming that you invest 10.000 EUR, defined on the basis of the performance of financial markets over the previous 5 years. **What you will actually get back will depend on how the product performs in the future. Actual future performance could be lower than described in the stressed environment** or higher than described in the favourable environment.

The figures shown include all the costs of the product itself, and includes the costs of your advisor or distributor. The figures do not take into account your personal tax situation, which may also affect how much you get back.

7. Annex to Section 4.3 (Analysis of UCITS Regulation 583/2010)

This Annex includes the relevant provisions from the UCITS Regulation 583/2010 that are discussed in the Section 4.3 of this consultation paper.

7.1.1 General principles (Chapter I – Articles 1 to 3 of the UCITS Regulation 583/2010)

Article 2(2):

"*This Regulation shall apply to any investment company which has not designated a management company authorised pursuant to Directive 2009/65/EC*"

7.1.2 Form and presentation of the KII (Chapter II – Articles 4 to 6 of the UCITS Regulation 583/2010)

Article 4(4):

"*The identification of the UCITS, including the share class or investment compartment thereof, shall be stated prominently****. In the case of an investment compartment or share class, the name of the UCITS shall follow the compartment or share class name. Where a code number identifying the UCITS, investment compartment or share class exists, it shall form part of the identification of the UCITS****.*"

Article 4(6):

"***In addition, in cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated****. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products*"

Article 4(12):

"***Authorisation details shall consist of the following statement:***

'This fund is authorised in [name of Member State] and regulated by [identity of competent authority]'.

In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:

'[Name of management company] is authorised in [name of Member State] and regulated by [identity of competent authority]'."

7.1.3 Contents of the sections of the KII (Chapter III – Articles 7 to 24 of the UCITS Regulation 583/2010)

Article 7:

"***Specific contents of the description***

1. The description contained in the 'Objectives and investment policy' section of the key investor information document shall cover those essential features of the UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:

(a) the main categories of eligible financial instruments that are the object of investment;

(b) the possibility that the investor may redeem units of UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;

(c) whether the UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;

(d) whether the UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

(e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UCITS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

(a) where the UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;

(b) where the UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details on the algorithm and its workings which appear in the prospectus;

(c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as 'growth', 'value' or 'high dividends';

(d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UCITS;

3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by a management company as specified under paragraphs 1(d) and 2 (b), (c) and (d).

4. The 'Objectives and investment policy' section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UCITS' investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UCITS."

Article 9:

*"**Principles governing the identification, explanation and presentation of risks***

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UCITS' management company as laid down in Directive 2010/43/EU. Where a management company manages more than one UCITS, the risks shall be identified and explained in a consistent fashion"

Articles 15 to 19 on past performance:

These articles are the following ones:

"*Article 15*

Presentation of past performance

1. The information about the past performance of the UCITS shall be presented in a bar chart covering the performance of the UCITS for the last 10 years.

The size of the bar chart referred to in the first subparagraph shall allow for legibility, but shall under no circumstances exceed half a page in the key investor information document.

2. UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

4. For a UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

(a) warn about its limited value as a guide to future performance;

(b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;

(c) indicate the year in which the fund came into existence;

(d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to UCITS which do not have entry or exit charges.

6. A key investor information document shall not contain any record of past performance for any part of the current calendar year.

Article 16

Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

Article 17

Impact and treatment of material changes

1. Where a material change occurs to a UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UCITS' past performance prior to that material change shall continue to be shown.

2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

Article 18

Use of a benchmark alongside the past performance

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the UCITS' past performance.

2. For UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UCITS did not exist.

Article 19

Use of 'simulated' data for past performance

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:

(a) a new share class of an existing UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UCITS;

(b) a feeder UCITS may simulate its performance by taking the performance of its master UCITS, provided that one of the following conditions are met:

(i) the feeder's strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets;

(ii) the feeder's characteristics do not differ materially from those of the master.

2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.

3. A UCITS changing its legal status but remaining established in the same Member State shall retain its performance record only where the competent authority of the Member State reasonably assesses that the change of status would not impact the UCITS' performance.

4. In the case of mergers referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC, only the past performance of the receiving UCITS shall be maintained in the key investor information"

Article 20

Content of 'practical information' section

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in every Member State in which the UCITS is marketed:

(a) the name of the depositary;

(b) where and how to obtain further information about the UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

(c) where and how to obtain other practical information, including where to find the latest prices of units;

(d) a statement that the tax legislation of the UCITS' home Member State may have an impact on the personal tax position of the investor;

2. Where the key investor information document is prepared for a UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between compartments.

3. Where applicable, the 'Practical information' section of the key investor information document shall state the information required about available share classes in accordance with Article 26."

Article 21:

"***Use of cross-references to other sources of information***

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the key investor information document, provided that all information fundamental to the investors' understanding of the essential elements of the investment is included in the key investor information document itself.

Cross-references shall be permitted to the website of the UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the key investor information document but they shall be kept to a minimum."

7.1.4 Particular UCITS structures (Chapter IV – Articles 25 to 37 of the UCITS Regulation 583/2010)

Articles 25 to 34, except Articles 29 and 30:

Article 25

Investment compartments

1. Where a UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.

2. Each key investor information document referred to in paragraph 1 shall indicate within the 'practical information' section the following information:

(a) that the key investor information document describes a compartment of a UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire UCITS named at the beginning of the key investor information document;

(b) whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor;

(c) whether or not the investor has the right to exchange his investment in units in one compartment for units in another compartment, and if so, where to obtain information about how to exercise that right.

3. Where the management company sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling

units, that charge shall be stated separately in the 'Charges' section of the key investor information document

Share classes

Article 26

Key investor information document for share classes

1. Where a UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.

2. The key investor information pertinent to two or more classes of the same UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The management company may select a class to represent one or more other classes of the UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.

4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.

5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice

Article 27

Practical information section

If applicable, the 'Practical information' section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the UCITS that are marketed in their own Member State.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in Article 50(1)(e) of Directive 2009/65/EC, the description of the objectives and investment policy of that UCITS in the key investor information document shall

include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Feeder UCITS

Article 31

Objectives and investment policy section

1. The key investor information document for a feeder UCITS, as defined in Article 58 of Directive 2009/65/EC, shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.

2. There shall also be a description of the master UCITS' objectives and investment policy, supplemented as appropriate by either of the following:

(i) an indication that the feeder UCITS' investment returns will be very similar to those of the master UCITS; or

(ii) an explanation of how and why the investment returns of the feeder and master UCITS may differ.

Article 32

Risk and reward profile section

1. Where the risk and reward profile of the feeder UCITS differs in any material respect from that of the master, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the key investor information document.

2. Any liquidity risk and the relationship between purchase and redemption arrangements for the master and feeder UCITS shall be explained in the 'Risk and reward profile' section of the key investor information document.

Article 34

Practical information section

1. The key investor information document for a feeder UCITS shall contain in the 'Practical information' section information specific to the feeder UCITS

2. The information referred to in paragraph 1 shall include:

(a) a statement that the master UCITS' prospectus, key investor information document, and periodic reports and accounts are available to investors of the feeder UCITS upon request, how they may be obtained, and in which language(s);

(b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with Article 63(5) of Directive 2009/65/EC;

(c) where the master UCITS is established in a different Member State to the feeder UCITS, and this may affect the feeder's tax treatment, a statement to this effect"

Article 35

Past performance

1. The past performance presentation in the key investor information document of the feeder UCITS shall be specific to the feeder UCITS, and shall not reproduce the performance record of the master UCITS.

2. Paragraph 1 shall not apply:

(a) where a feeder UCITS shows the past performance of its master UCITS as a benchmark; or

(b) where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the feeder existed, based on the past performance of the master UCITS; or

(c) where the feeder UCITS has a past performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).