

Set up in 1960, the European Banking Federation is the voice of the European banking sector (European Union & European Free Trade Association countries). The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions. The EBF is committed to supporting EU policies to promote the single market in financial services in general and in banking activities in particular. It advocates free and fair competition in the EU and world markets and supports the banks' efforts to increase their efficiency and competitiveness.

Response to CESR Consultation Papers on the UCITS Key Investor Information document

Key Points

- The EBF agrees with most of CESR's current proposals on the details of the KII documents.
- The Federation continues however to be concerned about possible mis-interpretations and the over-simplification resulting from the 'synthetic risk and reward indicator'. This risk could be mitigated by naming the Header in line with the information that it presents in reality, i.e. Past Volatility.
- The EBF also makes some detailed suggestions for the streamlining and more consistent structuring of the KII documents in other areas.
- In some cases, CESR's guidelines seem difficult to comply with without risking misunderstandings. There are for example some technical terms such as 'subscription' and 'redemption' that it would be difficult to avoid.
- The two pages limit will be difficult to comply with. As an alleviation for structured funds, the different scenarios could be displayed in a single table.

Contact Person: Uta Wassmuth, u.wassmuth@ebf-fbe.eu
Related documents: CESR consultation documents: <http://www.cesr-eu.org/index.php?page=consultation&mac=0&id=>

General remarks

The European Banking Federation has long supported the objective of providing investors in UCITS with short, well-targeted information about UCITS funds. Work to identify the most relevant information and the best way of displaying it in a way that appeals to investors has been carried out in a comprehensive and systematic way, for which the European Commission and CESR are to be commended. The EBF believes that the result, overall, is a very good one.

As a specific but important point, the EBF has in the past expressed concerns that the synthetic risk-and-rewards indicator simplifies the risk involved in investment products in a way that could become problematic, especially in the case of adverse economic developments; and that the fact of using different methodologies for 'normal' UCITS and 'structured' UCITS is a serious shortcoming of the system that has been developed.

While these fundamental concerns remain, the EBF believes that the proposals now made by CESR for a KII template, for guidance on the language to be used, the guidelines for the KII for structured UCITS, and the guidelines for the transition from the Simplified Prospectus to the KII are overall appropriate.

On a related matter, the EBF would encourage CESR to undertake additional work on the regime provided for share classes in Article 26, paragraphs 2 and 3. These provisions can be interpreted and implemented in different ways. It would therefore be of great value for CESR to consult on and subsequently provide guidance on the principles according to which management companies should select share classes for each UCITS.

Detailed comments

KII template

- As regards the 'Risk and Reward Profile', the EBF has in the past underlined the risk of oversimplification that is implied by a synthetic indicator. The proposed Header itself risks reinforcing this risk. The calculation of the synthetic indicator and its main limitations on the basis of past volatility is backward-looking, whereas an investor would be interested in the risks that could impact on the fund's future performance. Furthermore, there is no direct representation of 'rewards' in the proposed indicator. Rather, a historical indication of rewards is given in the Past Performance Section.

The Heading, therefore, should rather say what is displayed in reality, namely a measure of the fund's Past (or Historical) Volatility. This would also be consistent with the statement required according to CESR's draft guidance on the use of clear language and layout for the KII, that 'the indicator is not a measure of the risk of capital loss but is a measure of the fund's previous ups and downs in value' (p. 11 of the consultation document on language and layout).

- Furthermore, it would be more logical that the information about how and at what frequency units may be redeemed be part of the section on Practical Information, instead of the Section on Objectives and Investment Policy. It should be presented together with the information about where to find unit prices.

- The statement that ‘portfolio transaction costs will have a material impact on performance’ is also misplaced in the Objectives and Investment Policy Section. It should instead be included either in the Performance Section or in the Charges Section.
- In the Past Performance Section, it could be considered to add information as to when the fund was launched.
- Finally, the EBF notes that the maximum length of two pages will be difficult to comply with. Even the template as it stands, without detailed information in each of the Sections, already fills two pages. In this context please cf. also the comments below on the Guide to Clear Language in respect of the case where there are different language versions for the same KII, where some languages require considerably more space than others.

Draft Level 3 Guidelines for the KII for structured UCITS

- The EBF would welcome additional guidance by CESR on:
 - a) How to explain that the different performance scenarios occur with varying degrees of probability. Box 3 highlights this issue, but the examples provided in the Annex avoid its application.
 - b) The criteria according to which to choose between the use of either a graph or bar chart or a table in presenting the different scenarios.
- CESR proposes the display of three payout scenarios, starting with the unfavourable one. In order to give a more balanced view and avoid stressing the unfavourable scenario, as well as to save some space, the EBF believes that it would be preferable to use a single table to display all three scenarios (medium, favourable, and unfavourable scenario). Alternatively, there should be a free choice about the order of the scenarios.
- For the calculation of the fund’s performance, CESR proposes to only allow annual calculations. In some instances, this might be too restrictive. In the view of the EBF, it should be possible to use longer time horizons, such as two years. Of course, the KII should include a clear statement on the time horizon used for the calculations.

A Guide to Clear Language and Layout for the KII

- The EBF appreciates that CESR’s guidelines in respect of the language and layout to be used for the KII are meant to help the drafting process, but do not constitute a mandatory complementation of Commission Regulation 583/2010 in respect of e.g. the font size to be used and other specific aspects of the KII.
- CESR states that the KII ‘should grab readers’ attention and encourage them to read it’. Some concerns have been raised that this statement could stand in contrast with the principle that KII should not become sales documents, but should rather be kept in a neutral language.

- In respect of CESR's guidance on the use of 'plain English' and the use of jargon, CESR should consider what the KII would look like in other languages and whether there is a need for various country-specific style guides/ glossaries.

In the same context of different languages, there is a potential concern about the page limitation. Typically, translations from English into other languages require more space to express the same meaning. CESR should clarify how this should be handled when consistency of format and content across different language versions of the same document are to be ensured.

- CESR's instruction to 'avoid industry terms such as subscription, redemption and re-purchase' seem difficult to comply with, at least for these key terms. The use of alternative terms would risk being misleading, all the more so as these terms are used in the full prospectus and are often also used in subscription forms.

Transition from the Simplified Prospectus to the Key Investor Information document

- The EBF welcomes CESR's clarification, in Point (1) of the Section on 'Special circumstances', that the simplified prospectus would satisfy the passporting requirements where the UCITS still uses the simplified prospectus in the home Member States. The EBF fully agrees that a 'management company shall always provide the same type of document (whether simplified prospectus or key investor information) to investors in the UCITS' home State and in every host State in which it is notified'. For the sake of clarity, the EBF would request an explicit statement that where the management company already makes use of the KII during the transition period, host Member States shall accept the KII for notification purposes.