

Berlin, 21.12.2007

Comments of Verbraucherzentrale Bundesverband (vzbv) on the CESR Consultation on UCITS investors' disclosure

1. Are respondents aware of other research which is relevant to the market and regulatory failures associated with the SP?

No.

2. Do respondents consider CESR's proposals would address the regulatory failures associated with the SP?

We cannot identify single regulatory failures associated with the SP; therefore we cannot evaluate the proposals from this point of view. Nevertheless CESR's proposals present a step in the right direction to diminish consumer problems related to the SP / KII (concerning the potential for improving the KII see our remarks below).

3. Do respondents think that CESR has accurately described the context in which KII is likely to be used, and has correctly identified outstanding issues?

Most of the key issues are adequately described. Nevertheless we would like to point out that the responsibilities should be made clear for the consumer, e.g. that in case of an outsourcing of the distribution of UCITS the responsibilities remain with the provider and that wrapped products also fall under the KII-regime. Interaction with other directives – i.e. MiFID – should be taken into account at an early stage in order to minimize problems. The KII could rather be called KID (Key Investor Document).

4. Do respondents agree with the proposed purpose and scope of KII?

Yes. But we want to point out, that it should be mandatory to update a KII at least annually and that there should be a responsibility to provide the KII actively rather than making it available.

5. Should non-retail investors be permitted to opt out of receiving KII?

In principle yes. As an example for defining those “non-retail investors” it could be helpful to use the definition of the “professional client” in the context of MiFID. This could also be helpful in the context of establishing a consistent system of directives.

6. Do you think that CESR's proposals on general presentation are appropriate?

In principle yes. We'd like to emphasize that the KII has to be a document for itself, that means a “stand-alone”-document, the length of which should be maximum one sheet (two pages) with a reasonably sized type and written in plain language.

We don't consider it helpful to start with a "good practice guide". First we should gain experience with the KII before such a guide could be established.

7. Should CESR propose adopting a more prescriptive approach, for instance using detailed templates, or should it support a less prescriptive, more principles-based approach?

In our view, the headings and the order should be standardized. The aim is to assure that the KII of different offers are easy to compare and to assure that it is easy to find out if the given information is sufficient. To reach this aim it is necessary that the KII is a "stand-alone"-document without "building-blocks".

8. In relation to the proposals on content, should Option A (with fewer items) be favoured compared to option B?

We favour option A added by information on out-of-court redress schemes.

9. How should both options best be tested with consumers?

An intensive testing should be a vital step to establish the KII. The chance should be taken – via testing - to avoid the failures of the SP. We assume that tests in each MS should be done with respect to different sales channels.

10. Has CESR correctly struck the balance between reducing the information provided and ensuring investors receive the key messages they need?

If there is a "correct balance" we assume that it is nearly struck. But we'd like to refer to the criticism or proposals that is contained in some of our answers to this questionnaire. A final answer to this question will only be possible after the testing and the knowledge about the key messages the investors need.

11. Should the competent authority of the fund and the tax regime of the fund in its Home Member State be included?

The competent authority should be included, as it is already included in both options A and B. To include the tax regime could blow up the necessary content too much – especially referring to the complex tax-regime in Germany. Therefore we don't consider it useful to include the tax regime.

12. Do you think other items of information are necessary? If so, which ones in particular?

We'd like to refer to the answers of the other questions (e.g. 8, 11). We have no additional suggestions.

13. Do you agree that distribution costs should not be systematically ‘unbundled’ within KII? Should there be flexibility to allow this where appropriate?

There should be a clear defined regime how to handle this problem in order to provide that different KII are comparable. Unbundling the costs should be necessary. Only by unbundling, the costs of different distribution channels can be compared.

Only if there is a guarantee that the information about costs is given in another, mandatory way, it should be possible not to mention costs in the KII.

14. Does the proposed approach of local information (a harmonized section for local information within KII, that would be precisely delineated) achieves a correct balance between the need for local information and the smooth functioning of the passport ? Is a more radical approach (i.e signposting local information to a website) feasible and appropriate ?

We think that signposting is the right way to deal with the local information. The KII should focus on the essential issues of the UCITS.

15. Should a ‘building block’ approach be permitted, whereby providers can produce different parts of the KII separately?

Definitely not. By using “building blocks” the standardisation gets lost and the aim of KIIs that are comparable and easy to understand will not be reached.

16. Do respondents agree with the proposed treatment of funds of funds?

Yes.

17. Should separate KII be produced for each sub-fund of an umbrella? Should providers be permitted to produce a compendium for all the sub-funds of an umbrella if they wish?

Yes, and it is necessary to provide that no exception will be tolerated to prevent that some UCITS get sold without a proper KII.

18. Do respondents agree with the proposals for treatment of unit / share classes? In particular, should providers be permitted to produce KII featuring a representative class?

We agree as long as it is clear, that the chosen representative class is the one with the highest charges.

19. Do you think that CESR’s proposals on the presentation of the strategy and objectives of a fund is appropriate?

Yes, we welcome the distinction between objectives and strategy. We support the idea that the exposure of the top-ten-investments should be included or – where it is not possible – it is explained why such an exposure is not possible.

20. In particular, is it relevant to merge strategy and objectives into one generic item?

The author of the KII should have the possibility to merge them if it is appropriate.

21. Is the streamlining of the current applicable Recommendation relevant for the purpose of focusing the description on key elements? Do you agree with the addition of new key items to mention within that section: guarantee, period of holding inappropriate if any, design also for retail non-sophisticated investors?

Yes, and we explicitly recommend to include the mentioned topics of guarantee and inappropriate period of holding (that is related to risk).

22. More specifically, do you agree that it should be required that in case the capital is not legally guaranteed, the term ‘guarantee’ should not be used in the KII, and it should be shortly mentioned to investors how the protection is achieved ? In case the capital is legally guaranteed do you agree the guarantor should be mentioned? Do you agree that it is not necessary to mention explicitly that a fund is not capital guaranteed?

The term „guaranteed“ should only be mentioned in the case of a *legal* guarantee. In this case the guarantor should be mentioned.

23. Do you agree that mentioning whether it would not be appropriate for the investor to invest into the UCITS, if he anticipates the need to redeem within a defined time period to be stated, is the appropriate way to deal with time horizon issues without leading to misunderstandings?

Yes, it must be mentioned in the Risks section. The financial literacy level of retail investors is quite low on average, and they must be warned that an equity fund for example is not suitable if they need the cash within a defined period. Different fixed time periods should be mentioned like a short-time-period (6 months) a medium-term-period (2 years) and a long term period (5 years).

24. Do you agree that giving management companies the opportunity to flag funds that have not been designed for non-sophisticated investors, with no legal consequences, would help in preventing missellings, especially in the case of ‘execution only’ subscriptions?

Yes, although it is important to understand what “with no legal consequence” means. Management companies are supposed to be responsible for what they write. Companies must not circumvent their obligations by flagging funds.

25. Do you agree that the presentation of a synthetic indicator should be favourably tested with stakeholders and consumers?

Yes, provided an indicator can be found that is robust enough to withstand the weaknesses of the existing ones (volatility, VaR, etc.). A narrative should also be tested. And we should

not forget the liquidity risk, which may cause a capital loss or a delay in redemptions (take for example the impact of the subprime crisis on some money market UCITS funds last summer).

26. What specific presentation (icon, wording, numeric scale...) should be favoured and on what basis?

Icons and wording are better understood by the average retail investor: it could be a stop light with various colors from green to red and lines around the "light" (in case of a black and white print), or a wording from no risk on capital (guaranteed) to very high risk of losing part or all of the capital. The introduction of a quantitative risk evaluation/scale should be thought over.

27. How prescriptive should regulators be on the choice of a methodology, given that it should take into account commonly shared risk management practices and suit investors' perception of risks?

Methodology and format should be the same to allow comparison by retail investors.

28. Are you aware of any specific existing calculation methodology that should be proposed?

We are not aware of any calculation methodology that meets the requirements. The indicator not only has to be robust, but has to be easily explainable to the average retail investor. Neither volatility or VaR achieve these two requisites. We'd favour establishing a working group with industry representatives and academics to propose a robust and single methodology achieving a simple risk scale for the KII (see also q. 25).

29. Is the suggested assessment grid at Annex 4 for methodological and presentation issues appropriate and sufficient for identifying a relevant methodology?

Yes (see Annex 5).

30. How could the potential limitations of the quantitative calculation of a synthetic risk/reward indicator be further mitigated?

Icons or wording as suggested in 26 should be added (see also q. 28). It is necessary to keep in mind that a system of icons is also based on some quantitative calculation.

31. Do you agree that the possible limitations to a risk/reward indicator might be effectively communicated to consumers through textual warnings? Is the proposed wording appropriate?

Such a warning would not be very clear to an average investor, especially the last sentence: "but this might be modified through the operation of deep market trends".

32. Which funds or which risks might not be adequately captured by a quantitative methodology?

E.g. hedge funds and funds of hedge funds

33. Could the display of scenarios or tables illustrating the behaviour of formula funds enhance the information disclosed for those funds? Do you think that such presentations should be limited to formula funds? Do you think that such presentations might have some misleading effects, might be manipulated, or mistaken for a guarantee?

How could these be addressed and reduced? Do you think that such disclosure should be made in a harmonised way? What could be possible ways of showing prospective scenarios?

Formula funds are usually even more complex than classic funds. We'd favour the display of scenarios only for these funds, and only as an attachment to the two pages KII document in order to stick to the two pages maximum. Such presentations may certainly have some misleading effects and had in the past.

34. On the narrative side, do you agree with the suggested high-level principles?

Yes, if there the risk is being graded (see 26).

35. Is CESR correct to recommend that information about past performance be included in the KII?

No; the only case should be that it is related to an objective and comparable benchmark (in the Netherlands this benchmark is prescribed by the supervision authority). This comparison has been mandatory in the USA for decades. If not, the past performance information is rather meaningless and often misleading. So an objective and comparable benchmark is a must.

For example a fund having the objective of investing in European equities:

- should use a European equity index that matches its area of investing (for example not the very narrow Stoxx 50 index, if it invests in other equities than the first 50 mega-caps in Europe),
- should not use an index of a peer group of funds instead: it does not protect the investor if the basket of comparable funds is mismanaged for example: Baskets of "comparable funds" performance should be prohibited as a performance benchmark in the KII,
- if the fund capitalizes dividends, then the index must be the same ("total return index"). The frequent use of a "price index" (without dividends) in that case is clearly misleading, and CESR must not allow this to happen.

In case the manager declares not to have any benchmark, this must be clear when reading the "Objectives and Strategy" section and consistent with it (for example, a fund having the objective to beat the performance of the European equity market, cannot claim it has no benchmark and doesn't show its past performance in this section). In that specific case, he can use a peer group benchmark if he wishes to do so.

36. Has CESR identified the right areas and ways in which this information should be standardised?

Yes, with the exception mentioned above in 35.

37. Which charges should performance figures take into account? For instance, should figures include allowance for subscription and redemption fees?

Yes, using the maximum entry and redemption charges disclosed in the relevant section. At the very least it must be mentioned that it does not take them into account.

38. Has CESR identified the best overall options for including information about charges in the KII?

No, as told before, there should be a disclosure in cash terms in addition to the disclosures in percentages as the average investor has got problems understanding what the percentages mean and as the cash term disclosure presents the opportunity to include entry and redemption fees paid directly by the investor in the amount of total charges. We are aware that this implies taking assumptions, but the US experience shows this is much better understood by the average investor than the percentage disclosures.

We could live with Option A, if it is complemented by such a cash terms disclosure.

39. Should a 'consolidated' charges disclosure be included, and how should it be described?

If it the consolidated number shown at the end of the Option B table we can live with it, but believe it is less understandable than the cash term disclosure described above.

40. Should options for the disclosure of charges in cash terms be explored further?

Yes.

41. Do you have any comments on how charges should be organised (e.g. between charges relating to subscribing and redeeming units, ongoing fund charges, and contingent charges), labelled (e.g. 'initial charges,' 'exit charges,' 'ongoing charges') and the accompanying narrative messages regarding what they include or exclude? How much detail is necessary in a document like the KII?

We can live with the labelling as shown in the Option A and B tables, "initial" charges should however be better called "entry" charges to be consistent with the "exit" ones.

42. In relation to the handling of ex-post and ex-ante figures, is it appropriate to include only a single figure for ongoing fund charges in the KII, and if so, on what basis? Do stakeholders have any particular views as to the handling of such information?

Mainly the maximum ex ante charges should be used. The actual charges are often very close to the maximum ones. Furthermore the maximum charges are most likely to be more predictive than the historical ones. What is important is an indication of what the subscriber will pay once he has invested, not what has been paid in the past.

43. How should situations where there is a material change in charging levels be addressed?

The KII should be modified in these cases.

44. Should portfolio transaction charges be included or excluded from the disclosure of ongoing fund charges? If they should be included, how should assets for which transaction charges are not readily available be handled?

Yes, as long as such figures are available. In some cases they will not be available or it will not be possible to find one distinctive figure. Only In these cases it should be possible to refer to the full prospectus. Then an explanation about the negative effect of transaction charges is needed. Also it should be made clear why such figures cannot be given.

45. Has CESR identified the best option for handling performance fees in the KII?

Yes

46. Do you agree that CESR should recommend that charges are disclosed on a maximum basis?

Yes (see 42).

47. Are there any options for providing more accurate information, in a way which consumers might understand, about charges under different distribution arrangements?

The EU and Member States regulators must ensure that the MIFID disclosure requirement at the point of sale is enforced thoroughly. We are concerned about the actual implementation of MiFID in some Member States.

48. Do you agree that CESR should recommend that charges for a feeder fund and its master be combined into a single disclosure in the KII?

It is a must. And it must not only be “combined” but clearly added in a single amount. Any other presentation would be less clear and very misleading as the investor is actually paying the sum of the two levels of charges. For fund of funds the same applies. CESR claims this is already achieved with the SP, but evidence shows that in some countries the maximum charges disclosed in the SP do not comply with this rule: the two layers of charges are not added to show the combined total maximum ongoing charges.

49. Do respondents have any comments on the proposals for consumer testing?

50. Do respondents have any initial views on the one-off costs of replacing the SP with KII?

51. Do respondents have any initial views on the on-going costs of KII, compared with those currently included in producing the SP?

52. What, if any, transitional arrangements should there be if the SP is replaced with KII?

53. Is the gradual introduction of KII feasible?

Investors’ representatives should be involved in the design of consumer testing and be invited to comment on the results early. A single format KID should most probably dramatically reduce industry costs over time. The question is: will investors benefit from this reduction? We do not see that a “gradual” introduction of KII is feasible, we’d only see obvious drawbacks in such an approach, especially, again, in terms of comparability for the investors.