

POSITION PAPER



ESBG response to CESR consultation on its technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS

September 2009



The European Savings Banks Group (ESBG) welcomes the opportunity to comment on CESR's draft technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS.

ESBG would like to reaffirm its support for KID, being one of the core elements of the UCITS revision. ESBG expects that KID will in particular bring benefits for retail investors, improving their understanding of the product. KID has, nevertheless, to be complemented by investment advice and financial literacy of consumers and ESBG confirms its engagements in these two areas.

ESBG acknowledges the considerable work already undertaken by CESR in preparation of the level 2 advice. In particular, ESBG appreciates CESR's involvement in the investor testing exercise, which ESBG considers an indispensable step in the preparation of KID.

ESBG agrees with many of the proposals included in CESR's level 2 draft advice and therefore limits its comments to some critical issues:

Form and presentation of Key Investor Information

Title of document, order of contents and headings

ESBG agrees to CESR's proposal as regards the title of document, order of contents and headings contained in Box 1. ESBG considers useful to name point 9 "Practical information" instead of "Additional information", as this will more strongly draw the investor's attention on this section.

Appearance, use of plain language and document length

ESBG in general agrees to CESR's proposals contained in Box 2. ESBG highlights that the maximum length of KID shall be of two A4 pages (and not of three pages, as indicated in section 3 on page 15 of the CESR consultation document). ESBG strongly advocates for a minimum point size of 10; size 8 or 9 should in no case be acceptable. These small sizes would be counterproductive in terms of readability of the document, and would discourage investors to read KID.

Content of Key Investor Information

Objectives and Investment Policy

ESBG doubts that the proposals included in Box 4 guarantee comparability in an optimal manner, as all information under b) shall be provided *if* it is material. On another note, ESBG wonders whether b)vi) will bring added value as compared to a).

Risk and reward disclosures

Although ESBG is still of the opinion that the narrative description of risk and reward is the best approach and can deliver more valuable and clearer information to the investor than a synthetic indicator could deliver, it can accept option B (Box 5 B), as the synthetic risk and reward indicator is complemented by narrative explanations.

ESBG welcomes that the proposed new methodology is based on volatility as computed through reverse engineering from a VaR measure for structured and other comparable funds. ESBG regrets that this method is not also proposed for normal funds; a harmonised approach would be preferable in ESBG's view.

In response to the **Addendum to CESR's consultation paper**, specifically dealing with the synthetic risk and reward indicator, ESBG has the following comments:

- Volatility intervals designed to provide a higher discriminatory power (Box 2): Instead of avoiding excessive bunching, the focus should rather lie on achieving comparability of different risk categories.
- Periodic updating of the SRRI- rules to assess migrations (page 5 following): ESBG is in favour of rule 1 (do not use any specific migration rule).
- New funds and funds with insufficient history (page 9 following): The establishment of an asset mix risks not to be undertaken on an objective basis (due to conflicts of interests).
- SRRI computation methodology for structured funds (page 14): ESBG is opposed to the introduction of a specific disclaimer for structured funds to indicate that the fund might have a different level of risk if the investment is held until maturity or redeemed before that date. In ESBG's view such a disclaimer could lead to a wave of premature redemptions. Rather, a uniform calculation about the maturity should be used for fix-term funds.
- SRRI computation methodology for structured funds (Boxes 3 and 4): The process is explained based on the presumption that only one index exists, although in practise different indexes can be involved.

Coming back to the CESR consultation paper 09-552, ESBG notes that CESR has finally chosen to go for a scale with six risk categories (instead of seven with an optional exclamation mark). ESBG regrets this choice, as in its view the exclamation mark still seems to be the best (though not perfect) option to capture the attention of the investor, motivating him to look for further information on the product.

Finally, in line with ESBG's position paper of May 2009, ESBG insists that from the view of the distributor it remains still unclear, how this scale interrelates to the responsibilities under MiFID Art. 19 (4) (suitability) and 19 (5) (appropriateness), i.e. whether the bank can accept the risk category as a given fact or whether it needs to do its own assessment. In ESBG's view a clarification of this interrelation is of utmost importance. Furthermore ESBG identifies practical problems related to the introduction of a risk scale and refers to already existing risk scales which have been introduced by ESBG's Member banks while complying with MiFID.

Charges disclosures

ESBG supports CESR's proposals included in Box 6 and considers in particular useful, that percentage amounts indicate the different charges (excluding performance fees) and that a brief narrative explanation of each of the charges (including performance fees) is included. ESBG also welcomes the inclusion of a warning that ongoing charges may vary from year to year.

Disclosure of charges in cash terms

In its position paper of May 2008, ESBG expressed its concerns regarding the use of cash figures. Against this background, ESBG welcomes that CESR clarifies in Box 7 that the summary measure of charges is no forecast. However ESBG still considers that it would be preferable to abstain from the use of cash figures and recommends the use of percentage figures only.

Inclusion of a benchmark alongside the fund past performance

ESBG notes that CESR reflected whether it should give guidance on the benchmark system (see page 45), but finally considered that this would be out of the scope of the current work on the content of KID. ESBG envisages that such advice could, however, be helpful in the future.

Maintaining the past performance record

ESBG refers to practical problems of updating all KIDs no later than 25 business days after 31 December each year, as proposed by CESR in Box 13. These practical problems are related to the (considerable) number of KIDs to be updated and to a lack of data (i.e. relevant data for the update will be only available after 31 December and therefore the process of updating cannot be prepared beforehand). Therefore ESBG proposes to take the business year of the fund as reference point, which would mean that the past performance records would be updated throughout the year.

Use of “simulated” data for past performance

ESBG welcomes it that CESR foresees not to allow a benchmark system for UCITS where past performance data is not available. In this context ESBG understands the reasoning of CESR’s proposals included in Box 16. However, ESBG mentions that permitting (but not requiring) a simulated performance record has a negative impact on the comparability of KIDs.

Content of “Practical information” disclosure

ESBG agrees to the elements included in Box 17 as well as to the idea of keeping this section short. Nevertheless ESBG recommends reconsidering whether certain information should be added. Notably, a number of the elements previously proposed by CESR, which have been dropped in the current CESR proposal, would deliver valuable information. This concerns in particular information “where to get further information, specific to country of residence”, “taxation regime”, “name of the fund auditor” and “date the fund was created”.

Special cases- how the KID might be adapted for particular fund structures

Umbrella structures

ESBG agrees to CESR’s proposals included in Box 20. In ESBG’s view it is of utmost importance to stress the indication that the fund is a compartment of an umbrella fund x; this information should be optically highlighted (written in bold or colour).

CESR proposes that, subject to local marketing regulations, a UCITS or distributor may produce marketing documents that summarise the features of two or more compartments of the same umbrella, provided such documents are in addition to the KID (see page 56). ESBG is opposed to this proposal and rather believes that the focus should lie on advice, as opposed to producing additional documents with an uncertain legal value.

Structured funds, capital protected funds and other comparable UCITS

ESBG agrees to the large majority of CESR Members who prefer option A (presentation of performance scenarios for structured funds based on prospective scenarios through the use of graphs or tables), as outlined in Box 24A.



About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of € 5967 billion (1 January 2008). It represents the interest of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG Members are typically savings and retail banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their region. ESBG Member banks have reinvested responsibly in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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