

Responses of the Investors' Department of the CNMV to the CESR Consultation paper on content and form of Key Investor Information disclosures for UCITS (CESR 07-669)

Chapter 2. Summary analysis of Simplified Prospectus (SP) regulatory failure

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?

Yes

Chapter 3. The wider context in which Key Investor Information (KII) would be used

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?

Yes

Chapter 4: General options for format and content of KII

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

We fully agree with CESR's proposal. The KII should be a tool to help retail consumers to make informed investment decisions.

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

We think that non-retail investors should be permitted to opt out of receiving KII. In our opinion this option is aligned with the spirit of Mifid (e.g. in Mifid firms are exempted of assessing appropriateness for professional investors and in providing certain information).

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

Yes.

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?

We agree with CESR's approach. The structure should be defined and the presentation and calculation of some items (risk, past performance, time horizon, expected return) should be standardised to allow comparability. However, given the diversity of products and providers, there should be certain flexibility.

In all events clarity should be observed (use of plain language, avoid small print, no legalistic disclosures).

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

We think that option A should be favoured.

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

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

Yes, we think so.

11. Should the competent authority of the fund and the tax regime of the fund in its home member state be included?

The identity of the competent authority of the fund should be mentioned.

In our opinion it would be advisable to indicate that taxes are another aspect to be taken into account, however it is not necessary to go into details on this matter.

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

It should be mentioned the expected time horizon of the investment.

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

As far as possible these costs should be unbundled (remember inducements provisions in Mifid)

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

Liquidity is a basic aspect in any investment, in consequence the KII should mention the liquidity features of the UCIT. Also the KII must specifically include where the prospectus can be found. However, details about how to submit subscription/redemption orders, cut off time and where to find on-going information about the fund, probably will not affect investor's decision. This information is important after subscribing the fund and, as it has been said the KII is a pre-contractual information (for making a decision). In our opinion, and for the sake of simplicity, the KII could avoid those details, that could be provided separately.

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

We advocate the single document approach.

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

We agree with CESR's approach (*RD IIC 5.10 has certain provisions about the maximum commissions that can be charged to clients and the information that should be provided to the investor on this matter*).

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?

We agree with CESR's point of view.

We support a KII document for each individual sub-fund.

We do not oppose to the production of compendium documents, provided such documents are in addition (and not in substitution) of the 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.

The use of one class on a representative basis for other classes may be permitted as long as the class effectively represent the other classes and the conditions stated by CESR are complied.

Chapter 5: Describing the fund's objective and strategy.

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

In general we agree.

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

Yes.

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

We agree with the addition of the three mentioned new key items.

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 briefly mentioned to investors how 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 it is not capital guaranteed?

In the case the capital is not legally guaranteed, the term "guarantee" must not be used.

We don't think that the name of the guarantor will be valuable for retail investors, in consequence could be omitted.

Although mentioning explicitly that a fund is not capital guaranteed could be redundant in light of the rest of the information provided in the KII, we think that should be included, as in just one sentence retail investor will notice that always, up to a point, is running a risk.

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 we think so.

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?

This sort of information is, in our opinion, valuable to make an investment decision.

Chapter 6: Risk disclosure

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

Yes we do.

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

A combination of wording and numeric scale

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’ perceptions of risks?

Harmonisation is needed, so regulators should define the criteria methodologies and should build, together with the industry, a common methodology (mix between b1 and b2, 6.33).

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

In Spain, the quarterly report to unitholders gives information about past volatility. This volatility is measured using data from the latest twelve months.

29. Is the suggested assessment grid at Annex 4 (Annex 5) for methodological and presentation issues appropriate and sufficient for identifying a relevant methodology?

Yes.

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

The easier the more useful for retail investors. Funds could be classified just in three main categories: aggressive, moderate or conservative with different grades in each one (e.g. conservative 1, conservative 2, conservative 3), according to their volatility. Because of the high level of the indicator, its limitations should be disclosed (as always in plain language), and additional explanation should be provided to give a more detailed information of risks.

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 appropriated?

Yes we do.

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

Default risk. Non-financial risks like operations risk (potential for failures in the firm's operating systems), political risk, legal risk, tax risk, model risk...

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 those presentations might have some misleading effects, might be manipulated, or mistaken for a guarantee? How could this be addressed and reduced? Do you think that such disclosure should be made in an harmonised way? What could be possible ways of showing prospective scenarios?

We think that those presentations are useful for investors, as long as they are balanced and fair.

In our opinion those presentations could be used in any type of funds, on this matter article 27 in level II Mifid provides guidelines to avoid manipulations or misleading effects.

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

Yes we do.

Chapter 7: Past performance

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

We fully agree in the potential for this information to be misleading. We also agree with CESR's analysis and final recommendation to include past performance in the KII.

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

Yes.

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

All charges the customer is likely to face should be included. Subscription and redemption fees should be included as long as they are not time related, for example a redemption fee that disappear three months after subscription could be avoided in performance calculations (although informed separately, see chapter 8).

Chapter 8: Charges

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

In our opinion, yes.

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

Yes.

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

It could be added as an example attached to the summary measure of charges (option B).

41. Do you have any comments on how charges should be organised (e.g. between charges related 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 KII?

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? If they should be included, how should assets for which transaction charges are not readily available be handled?

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

The KII must contain a prominent disclosure statement on this fact.

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?

According to Mifid (article 33 Level II) information should include all related fees, commissions, charges and expenses. On the other hand, since the KII is intended to be a simple and short document, and given that transaction costs are a result of the investment strategy and are already incorporated in past performance, maybe a narrative warning could be enough. This disclosure is specially important in the event of a change in investment's objectives/strategy as this can affect to future transaction charges.

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

We agree with CESR's approach.

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

Maybe Mifid provisions about inducements recommend a more detailed approach.

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

Mifid inducement provisions.

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

We agree.

Chapter 9: testing the benefits, and assessing the costs of KII.

49. Do the 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?