



**Martin Schultz, President of the European Parliament**  
**Roberto Gualtieri, Chair ECON**  
**Pervenche Berès, MEP**  
**Pierre Gramegna, Minister of Finance, Grand Duchy of Luxembourg**  
**Jonathan Hill, Commissioner**  
**Jyrki Katainen, Commissioner**

***Re: The major concern of all European securities and financial markets stakeholders regarding the “PRIIPs” Regulation: The elimination of past performance in the contents of the Key Information Document, and its replacement by “future performance scenarios***

Dear Sirs, Madame,

The Securities and Markets Stakeholder Group (SMSG) advises ESMA on all regulatory and supervision matters. In compliance with EU Law, it is composed of expert representatives of financial market participants operating in the Union, of their employees, of consumers, of users of financial services and of independent top-ranking academics.

“PRIIPs” (Packaged Retail and Insurance-based Investment Products) cover a large range of investment products that are marketed to savers and individual investors which, taken together, make up a market in Europe worth up to €10 trillion.

The SMSG is unanimously and highly concerned that standardized, easily comparable data on historical performance (of both the product and of its chosen benchmark) will be eliminated under the PRIIPs Regulation. All the work undertaken for many years to achieve this major improvement in the KIID for investment funds (UCITS Directive) will thus have been in vain. With the PRIIPs Regulation as it stands, we are very concerned that also UCITS funds will have to eliminate this key disclosure from their KIID before the end of 2019.

Of course, The SMSG acknowledges that past performance is not a reliable predictor of future performance.



However, without any information on past performance (including comparison with benchmarks), EU citizens will be prevented from knowing:

- if the product has generated any positive performance in the past or - on the contrary - has reduced the value of their savings (in other words if the product has made money for the investor or not so far)
- if the product has met or exceeded its stated investment objective
- if the product has matched or not the performance of its chosen benchmark
- if comparable products have performed better or not.

Even worse, EU citizens would be left with only artificial "scenarios" of future performance which we strongly believe would be even more misleading than past performance, as most likely :

- the use of probability-weighted scenarios will not be retained due to the difficulty of designing those;
- the likely use of "what if" scenarios (like ("favourable", "neutral" and "unfavourable" ones) that are not probability weighted will run the risk of making the average retail investor believe that the "neutral" scenario is the most probable, which is not the case.

In other words, the SMSG considers that the risks for future performance scenarios proving to be misleading and further also not comparable between different products are very high, and much higher than those arising from the (currently required for UCITS funds) disclosure of standardised historic performance together with that of the benchmark selected by the provider (always accompanied with the warning that past performance is not an indicator of the future one).

Besides, stakeholders - including the ESAs - are already struggling to get clear and comparable data on the past performance of retail investment products. The Capital Markets Action Plan released by the Commission on 30 September this year clearly asks the ESAs to analyze the actual performance of retail investment products.

The SMSG also wishes to underline that a prerequisite for the disclosure of performance related information is the compliance with existing investor protection rules, and, in particular those of MiFID I and II. MiFID requires that any information provided to investors must be "fair, clear and not misleading". In particular, "clear" legally means among other things that it is intelligible to the target audience. We doubt that whatever the parameters and models used, future performance scenarios would ever meet this legal requirement, especially as the KIID must be kept short (3 pages) and comparable. Any standards for future performance scenarios that will not meet this intelligibility requirement will therefore face the risk of being unlawful.

The whole SMSG therefore considers that an elimination of information on past performance - and especially past performance compared to that of the benchmark(s) chosen by the investment product provider



- would be a huge step backwards in terms of investor information and of investor protection. It would most likely maximize the risk of misleading and confusing individual investors and will certainly not improve their already rock-bottom (see the EU consumer scorecard published every year by the European Commission) trust level in the investments and savings services.

Therefore, as mentioned in its recent [public advice](#), the SMSG wishes to formally warn the European regulators about the extreme danger of forcing EU individual investors to rely only on shaky, hardly comparable future performance scenarios, while depriving them of the only performance information that is objective and that is least subject to mislead them: the standardised and comparable historical performance of the product and of its objective benchmark (currently required for all UCITS funds).

The SMSG believes that the best solution for all stakeholders – in line with the “REFIT” objective of the Commission – is to amend the Level I Regulation in order to reintroduce, as soon as possible, in article 8 of the Regulation, the disclosure of past performance of both the investment products and of their chosen objective benchmark.

The SMSG is therefore respectfully asking the Level I EU Authorities to take action as soon as possible and in any case before 31 December 2016 (the date when the Regulation will apply).

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Jesper Lau Hansen', written over a horizontal line.

Jesper Lau Hansen  
Chair

c.c. Steven Majoor, Chair ESMA, Andrea Enria, Chairperson EBA, Gabriel Bernardino, Chair EIOPA,  
Members of the ESMA Securities and Markets Stakeholder Group