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Comments to the consultation paper “CESR’s technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS”

Assogestioni¹ welcomes the opportunity to comment on the consultation paper “CESR’s technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS”. We deem it important to give all stakeholders the chance to put forward their considerations on an issue which will have a major impact on UCITS distribution across the European Union.

Before proceeding with our comments on the specific issues raised in the CESR consultation document, Assogestioni would like to express its appreciation of CESR effort in addressing both investors and the industry needs and is confident that the KID will constitute a substantial improvement on the Simplified Prospectus. In particular we would like to stress the importance of making the format that will emerge from this consultation mandatory across all member states in order to avoid national gold-plating which would reduce comparability of products and cost efficiency.

Form and presentation of Key Investor Information

Title of document, order of contents and headings (Box 1)

Do you agree with the proposals in Box 1?

Should the information referred to in point 9 of the box be called “Practical Information”?

We agree with the structure and the headings of the KID proposed by CESR in Box 1.

¹ Assogestioni is the Italian association of the investment fund and asset management industry and represents the interests of over 160 members who currently manage assets whose value exceeds 800 billion euro.



The proposed structure allows the creation of a clear document which can be easily understood by an average retail investor.

We suggest that the section entitled “Practical Information” should be renamed “Other Relevant Information” in order to avoid misleading the investor on the content of such section.

Appearance, use of plain language and document length (Box 2)

Do you agree with the proposals in Box 2?

In particular, do you agree that the maximum length of the document and the minimum acceptable point size for type should be prescribed at Level 2?

Are there any other rules that should be prescribed in relation to the appearance of the KID?

Measures concerning appearance, language used and length of the KID are in line with the need to ensure an adequate comprehension of the document by an average retail investor. Moreover, with reference to the use of plain language by management companies, we support CESR proposal to adopt level 3 measures on a common glossary of terms which could be made available to the public; such initiative could increase significantly – at European level – investor capacity to understand information in the KID.

Publications with other documents (Box 3)

Do you agree with proposals in Box 3?

We share CESR’s opinion on the need for the KID to stand out as a prominent document, separate from any other documents with which it can be provided to investors, in order to ensure that the KID itself is useful for a correct knowledge of the UCITS characteristics; such approach can ensure that the KID will effectively enable an average retail investor to take an appropriate investment decision.

Furthermore, we agree that “*the KID may be attached to, or form an integral part of, another document*”. Such opportunity can represent a practical solution for management companies which have to provide investors with other relevant pre-contractual information (*i.e.* MiFID L2 information, in the event that MiFID will be extended to collective portfolio management, as already is in Italy) and which will not be obliged to give investors many different documents.

Finally, we share CESR’s view concerning the possibility to “*extend the principle of providing a single document where it is likely to be helpful to investors to gather the KIDs for a range of funds together in one place*”; in particular, such principle could apply when a switch option is possible, even automatically, from one fund to



another.

Content of Key Investor Information

Objectives and investment policy (Box 4)

Do you agree with the proposals in Box 4?

In particular, do you agree that the information shown is comprehensive and provides enough detail to ensure comparability between KIDs?

Are there any other matters that should be addressed at Level 2?

We generally agree with the proposals. However, the meaning of the statement “a minimum holding period is an essential element of the investment strategy” under item d) should be clarified. In our understanding it refers mainly to structured funds (as defined in Annex 1) since a generic non-structured fund offers a high degree of liquidity in continuous time. For the latter type of fund, CESR might consider to add in its advice that no minimum recommended term for holding units is provided in the prospectus or in other marketing materials. Hence the warning statement under item d) should not be considered mandatory.

Risk and reward disclosure (Box 5) and Presentation of the synthetic risk and reward indicator complemented by narrative explanations (Box 5B)

What are your views on the advantages and disadvantages of each option described above?

Do you agree that Option B (a synthetic risk and reward indicator accompanied by a narrative) should be recommended in CESR’s final advice? Respondents are invited to take due account of the methodology set out in Annex 1, as supplemented by the addendum to be published by the end of July, when considering their view on this question.

Do you agree with the proposals for presentation of risk and reward in Box 5B? In particular, is the proposed methodology in Annex 1 capable of delivering the envisaged benefits of a synthetic indicator?

Does the methodology proposed by CESR work for all funds? If not, please provide concrete examples.

Respondents are invited to take account of the methodology set out in Annex 1, as supplemented by the addendum to be published by the end of July, when considering their view on the questions above.



Are there any other issues that CESR should consider if it decides to recommend this approach to the disclosure of risk and reward?

We agree on the adoption of Option B in CESR's final advice and strongly support the proposal made by CESR during the open hearing of having technical workshops with the industry on the methodological issues set out in the Addendum (CESR/09-716) before its details are finalised.

In view of this further work and regarding the volatility grids, we are ready to support option B on the basis of its allegedly higher discriminatory power. However, we are also concerned with the stability issue and believe that in order to assess whether a fund needs to change its risk class, a joint consideration of the proposed Rule 2 (a 3-month observation period) and Rule 3 (a safety margin around the risk class thresholds) might ensure a higher degree of stability (i.e. a fund should change risk category if and only if this is the outcome of both rules).

Presentation of the charges (Box 6)

Do you agree with the proposals in Box 6?

In particular, do you agree the table showing charges figures should be in a prescribed format?

We agree with the proposal, but we suggest to provide additional guidance on how to represent one-off costs if:

- the investor, upon subscription, decides whether to be subject to an entry or an exit fee;
- the cost is expressed as a monetary value and not as a percentage.

In the first case, it is not clear whether the table should indicate the maximum value of each fee or only the maximum value of the two fees. In the second case, it is not clear whether this information should be omitted or should be given proportionally to the cost based on a hypothetical value representative of the subscription or redemption.

Where necessary, in order to clarify the commission policies adopted, we consider useful to allow for additional notes to those currently provided.

If the financial year of the fund does not coincide with the calendar year, we suggest to replace the following sentence "*the ongoing charges figure is based on the last year's expenses*" with "*the ongoing charges figure is based on the last financial year's expenses*".

In case of funds of funds, it is not clear what kind of information should be inserted in the row regarding "performance fee". Presumably the information should refer to



the performance fees charged directly by the fund and not to those eventually borne by the underlying funds. For underlying funds it could be difficult to access recent performance fees and a large number of assumption would be required. This would make the resulting figure not significant and potentially misleading.

Do you agree with the methodology for calculating the ongoing charges figure?

We suggest adding the tax burden, if charged to the fund, to the list of costs to be excluded from the calculation of the ongoing charges. Please note that Italian funds are subject to a different fiscal regime from other Member States, as they are taxed on the operating income accrued during the year. The amount of taxation depends, as the performance fee, on the performance of the funds and, therefore, changes over time. The inclusion of these costs in the calculation of ongoing charges would give, consequently, a misleading and a wrong information to the investors.

Summary measure of charges (Box 7)

Do you agree with the proposals in Box 7?

In particular, do you agree that CESR should not prescribe a specific growth rate in the methodology for calculating the illustration of the charges?

In light of the results of tests on consumers, we do not agree with the proposal to present a summary measure of charges. We believe that the representation of an absolute value of a hypothetical cost to the investor creates confusion even when a disclaimer is provided. The amount showed depends on a number of assumptions (maximum entry/exit charges, numbers of years and growth rate) that could be interpreted incorrectly by the investor. For example, the customer might believe that the fund, in the time period indicated, obtains a performance similar to that shown in the example.

The objective of identifying the negative effect of the costs on the investments on returns is achieved with the strong indication provided in Box 6 "*It should also state that charges reduce the growth of the investment*".

Circumstances in which ex-post figures might be inapplicable: new funds (Box 8)

Do you agree with the proposals in Box 8?

Considering the number of assumptions needed for the calculation, we disagree with the proposals to give an estimate of ex-ante charge. To avoid uncertainty we suggest to indicate only the management fee with a disclaimer that inform investors that there are further cost on the fund.



Material changes to the charging structure (Box 9)

Do you agree that a variation of 5% of the current figure is appropriate to determine whether a change is material?

We agree with a variation of 5% to determine if the change is material.

Annual review of charges information (Box 10)

Do you agree with the proposals in Box 10?

We agree with the proposals.

Presentation of past performance for funds for which past performance exists or where simulated performances are permitted (Box 11)

Do you agree that the above CESR proposals on past performance presentation are sufficient and workable? If not, which alternative approach would you prefer?

If the performance of the fund is to be based on the net asset value, we agree with the proposals, but we suggest to change the letter b) with the following *b) The performance of the Fund takes into account all costs debited to the fund. Costs charged directly to the investor are excluded.*

Past performance calculation methodology (Box 12)

Do you agree that the above CESR proposals on past performance calculation are sufficient and workable? If not, which alternative approach would you prefer?

We agree with the proposals.

Maintaining the past performance record (Box 13)

- 1. Information about past performance shall be revised annually, following the end of each calendar year, so as to show the net return of the fund for that year. A duly revised KID shall be published no later than 25 business days after 31 December each year.**
- 2. This requirement does not apply to a fund until the end of the first calendar year in which it has a track record for the whole year.**
- 3. A KID shall not contain any record of past performance for any part of the current calendar year.**

We suggest to postpone the deadline to update the historical performance, from 25



business days after 31 December of each year, to the end of February, in order to reduce the cost of updating the KID. The higher number of days available would allow to update the KID, not only with the information on performance, but also with the information on costs. The annual review of costs information (Box 10) must be based on audited annual accounts and these are available, for most of the funds that closed the financial year at the end of December, by the end of the following February.

Impact and treatment of material changes (Box 14)

Do you agree that the above CESR proposals on material changes are sufficient and workable? If not, which alternative approach would you prefer?

We agree with the proposals and we support CESR proposal to adopt level 3 measures on a common illustration of “material charges” that could increase significantly – at European level – the investor capacity to understand the changes occurred to the fund investment policies or to other related issues.

Inclusion of a benchmark alongside the fund past performance (Box 15)

Do you agree with this approach? If not, which alternative approach would you prefer?

We agree with the inclusion of a benchmark alongside the fund past performance and we strongly agree with the proposal to show the performance of the fund with a benchmark on the same basis. We believe also that in some cases it is necessary to correct the benchmark’s performance to take care of the impact of the taxation on the fund. As we mention in the answer of Box 6, Italian based funds are charged with a withholding tax of 12,5% on the revenues of the fund. To compare, on the same basis, performance of the fund and of the benchmark it is necessary to correct the benchmark and mention it in a disclaimer. The disclaimer should also inform that the performance of the benchmark do not consider the costs charged to the fund. We suggest the following: “*The performance of the Fund takes into account all costs debited to the fund. Costs charged directly to the investor are excluded. The performance of the benchmark is gross of the cost charged to the fund but net of taxes applicable to the fund.*”

In case of material charges to a fund’s investments objectives and investment policy it should be made clear that it is possible to use a index composed by chain-linking the different indexes used during the period displayed in the bar chart.

The use of ‘Simulated’ data for past performance (Box 16)

Do you agree that the above CESR proposals on the use of “simulated” data for past performance presentation are sufficient and workable? If not, please suggest alternatives?



We agree with the proposals on the use of “simulated” data for past performance presentation.

Content of ‘Practical information’ disclosure (Box 17)

Do you agree with the proposals in Box 17?

We agree with the proposed content of the Section “*Practical Information*”.

Use of signposting to other sources of information (Box 18)

Do you agree with the proposals in Box 18?

We support the flexibility introduced in the KID by CESR, given that each management company would be allowed to make cross-reference to the information which it considers useful for investors, within the limits stated by CESR.

Circumstances in which a KID should be revised (Box 19)

Do you agree with the proposals in Box 19?

We agree with CESR’s proposal relating to the conditions under which the KID should be revised.

However, paragraph 2, letter b), of Box 19 states that a review of the KID shall be carried out “*prior to any of the following events: (i) a proposed change to the fund rules, instrument of incorporation, or prospectus not covered by (a)*”. To this respect, we underline that, at least in Italy, there are cases where changes (or even material changes) to the fund rules entry into force only 90 days after their adoption. The KID should take into account said cases, in order to avoid that, during such period, investors receive a document containing information which are not yet applicable. To address this issue, CESR’s advice should allow for the inclusion in the KID of transitional provisions indicating the exact date of entry into force of the aforementioned changes.

Umbrella structures (Box 20)

Do you agree with the proposals in Box 20?

We support CESR’s approach, especially when it notes that, subject to local marketing regulations, a UCITS or a 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, not in replacement. On this regard, we also underline the opportunity to extend such approach to other situations where, for marketing regulations or other local regulations, it is important



for the investor to have the knowledge of more than one fund simultaneously.

Share classes (Box 21)

Do you agree with the proposals in Box 21?

We agree with CESR's proposals in Box 21. We ask to clarify if the information on the year in which the class came into existence should be represented, considering the possibility to select a share class to represent one or more other classes of the UCITS.

Funds of funds (Box 22)

Do you agree with the proposals in Box 22?

We believe that information which CESR specifically request to include in funds of funds' KID are coherent with the characteristics of such funds.

With reference to the methodology to calculate ongoing charges, we suggest to add to the possibilities listed in the Annex 2 also the possibility to use only the management fee if one or more information on ongoing charges levied by the underlying collective undertakings is not available. When data on ongoing charges of the underlying is not available we suggest also to insert a disclaimer to inform investors about the estimation made. For example: "Charges are partially estimated".

See also comments indicate in "Presentation of the charges see" (Box 6).

Feeder funds (Box 23)

Do you agree with the proposals in Box 23?

We agree with proposed specific content of feeder funds' KID.

The presentation of performance scenarios for structured funds: prospective scenarios through the use of graphs or tables (Box 24A)

The presentation of performance scenarios for structured funds: performance scenarios base on probability tables Box (24B)

Do you agree with the above CESR proposals on performance scenarios? In particular which option (A or B) should be recommended? If not, please suggest alternatives.

We suggest that Option B is recommended (probability table approach). However, we think that the methodology set out in Annex 4 deserves an additional thorough



analysis and should be discussed in details with the industry. We are referring, for example, to the investment horizon (how should it be determined?) and to the appropriateness of the hypothesis of risk-neutral probabilities (we are not convinced it is a reasonable assumption). In any case we believe that, as long as they are based on a risk-neutral approach, performance scenarios should never be applied to mainstream funds such as market and strategy funds (see Annex 1 definitions).

We are ready to provide full support to CESR on these complex technical issues should ad hoc workshops be organised in the near future (see CESR proposal above).

Other issues

Conditions under which a durable medium might be used and requirements to be met when using the Internet (Box 25)

Do you agree with the proposals in box 25? If not, what alternative approach would you suggest?

We agree with CESR's proposals on the criteria and conditions relating to the use of a durable medium and of a website.

Other possible Level 3 work

Do you agree with the approach to transitional provisions set out above?

Are there any other topics, relating to KII or use of a durable medium, not addressed by this consultation, for which CESR might undertake work on developing Level 3 guidelines?

We strongly support the need to adopt measures to assist management companies in the effective implementation of KID rules. In order to avoid inconsistencies at national level between Member States and to provide a clear legal framework which does not give rise to any uncertainty, we deem it preferable that such measures are adopted at Level 2.

The Director General