

**Comments Template for Joint Consultation Paper concerning amendments to the PRIIPs KID (JC 2018 60)**

**Deadline  
6 December 2018  
23:55 CET**

Name of Company:	Securities and Markets Stakeholder Group	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
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<b>Reference</b>	<b>Comment</b>	
General Comments	<p>The Securities and Markets Stakeholder Group (SMSG) is grateful for the opportunity to contribute to the public consultation on draft amendments to Commission Delegated Regulation on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs).</p> <p>The SMSG wishes to underline that it has always strongly supported the aim of the PRIIPs Regulation. It is the first "horizontal" EU set of investor protection rules that encompasses both non insurance based and insurance based retail investment products and introduces a KID in order</p>	

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to enable investors to understand and compare the key features and risks of the PRIIP (Regulation 1286/2014, Article 1).

The SMSG therefore appreciates the ESAs' efforts to address the shortcomings that exist in the PRIIPs framework. However, we note that the implementation of this regulation required significant investments of resources in order to be ready by 1st January 2018. Since that date, manufacturers have also deployed significant efforts to implement PRIIPs, to draft and disseminate all KIDs and to explain to their distributors and/or customers this new document. Additionally, the SMSG regrets that the timetable of the consultation, only four weeks, does not allow for a proper stakeholder consultation, taken into consideration the very technical nature of the issues being consulted. The SMSG stands ready until the end of its current term ie. 31 December 2018, to give further input to the ESAs, should they so wish, as the ESAs work on draft amendments to the delegated regulation.

During the legislative process the SMSG dealt intensively with the dossier and in October 2015 warned in a letter to the co-legislators and the Commission that the legal requirements planned at that time, especially to indicate the future performance of the product, could lead to misleading investor information. Since the PRIIPs Regulation has been in force from January this year, the manufacturers, distributors and in particular the investors as the actual beneficiaries of the summary information, have not had the full expected benefits of this legislation in terms of horizontal and concise product comparability. While the aim of better investor information is generally shared and the principal intention behind the PRIIPs Regulation to enhance understanding, comparability and transparency through short and concise information is generally

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recognized, unfortunately in practice the PRIIPs KIDs in their current design do not fulfill these requirements.

**It is a shared view among the members of the SMSG that it is very urgent to appropriately address this undesirable situation in order to protect consumers and investors, and to bring about the necessary changes at the various levels of financial market regulation and supervision.** The suggested efforts of the ESAs to fix the regulation's shortcomings cannot replace the need to begin in a timely manner the review of the Level 1 PRIIPs regulation, as required by Art. 32 of said regulation which was to be finalized by December 2018. We note that there will be no time to conduct any consumer testing in the context of amending the delegated regulation before the European Parliament elections in May 2019 which raises the risk of rushing to develop solutions that are not addressing the current concerns faced by retail investors, and accordingly call for a proper and full review with the necessary testing and impact assessment.

The SMSG believes there are serious problems in the PRIIPs framework with at least the scope of the regulation, cost information about funds and performance scenarios. We raised our concerns in several letters, the last one to Vice-President Dombrovskis on 20 July 2018, copying the letter also to chairs of the ESAs (see annex). The SMSG regrets that the current consultation only addresses one of our concerns, namely performance scenarios by suggesting to introduce a past performance scenario where consistent with the nature of the product.

The SMSG believes that the suggested inclusion of past performance information, although an essential standard practice for funds, and asked for by the SMSG since 2015, does not remove the

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challenges with the current performance scenarios. The added value of past performance is that it is the only genuine representation of how certain investments actually performed. This also means that *simulated* historical performances, when historical performances are not available, are not always useful. In a context of passive management, for example, they can be approximated fairly well by combining benchmark performance with costs. In the context of active management or structured investment products, however, they have little relevance, as the added value of active management cannot be simulated in a reliable way.

The SMSG notes the proposal to adapt the narrative explanations to retail consumers, especially attached to such figures/ scenarios. The expected benefits may however be limited, as most retail consumers do not read the ‘small print’.

Future performance scenarios and cost information under the current methodologies are often misleading for investors in certain products (notably where the Recommended Holding Period is less than one year) and furthermore may not comply with certain MiFID II requirements, in particular the requirement that “where the information contains information on future performance, ... the information contains a prominent warning that such forecasts are not a reliable indicator for future performance.” ([Commission Delegated Regulation \(EU\) 2017/565](#), Article 44, 6e)

The SMSG is especially concerned that the ESAs propose that for the cost calculation of the RIY (Reduction in Yield) computation be no longer based on the so-called “moderate” scenario, but on a one-size-fits-all 3% annual gross performance one. Given, for example, the current gross

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performance of money market funds (less than 1% p.a.) the RIY cost information on related PRIIPs would become highly misleading.

Furthermore, we have concerns on the amount of changes identified by the ESAs. In particular, the sheer number of articles identified by the ESAs proves that the changes to the PRIIPs delegated act is no trivial matter, resulting in changes not being “targeted” but rather large in size and complexity. It is worrying that the rushed schedule will also not allow stakeholders, such as the SMSG, to scrutinise the final proposals in detail until they are submitted to the European Parliament and Council for a final endorsement.

**Conclusions**

The SMSG appreciates the ESAs’ efforts to address the shortcomings that exist in the PRIIPs framework. Given however that most of the concerns the SMSG has on PRIIPs will not be addressed before the Level 1 PRIIPs review, and given the current transparency regime for UCITS has proven to be effective, the SMSG considers that the current exemption of UCITS funds and certain AIFs from PRIIPs should be extended until the review of the level 1 PRIIPs Regulation has been fully completed, and its conclusion been fully reflected in EU rules.

This level 1 review is legally required and should be initiated as soon as possible. The SMSG believes that an interim targeted review (quick fix) of the level 2 regulation performed in haste is no substitute for the necessary review and urges both legislators and regulators to proceed *as soon as possible* with a profound review of the Priiips KID, thus allowing, as soon as possible, to move towards one KID.

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In the long-term it is important to find a consistent approach to investor information for all PRIIPs products, based also on adequate consumer testing. The PRIIPs regulation is without a purpose unless the key investor information is provided in a format that is understandable and that encourages retail consumers to read the information and enables them to compare the PRIIPs products as foreseen by Regulation 1286/2014, Article 1).

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