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:	**German Banking Industry Committee (Deutsche Kreditwirtschaft)**	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a question or a cell, leave the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-18-005@eiopa.europa.eu** **Our IT tool does not allow processing of any other formats.**	
Reference	**Comment**	
General Comments	We appreciate the ESA`s initiative to examine how to improve the PRIIPs-KIDs (particularly with regard to the extension of the scope to funds, as it is still foreseen in the PRIIPs regulation). Nevertheless, the Consultation Paper only reflects some minor problems of the PRIIPs regulation. Many of the major problems with the current legal requirements are not targeted in the Consultation Paper. The ESAs themselves state on various occasions in their paper that given the short timeframe the amendments had to be limited.	

With regard to the immense problems identified, the Commission should give the ESAs a mandate to propose amendments to the Commission delegated regulation 2017/653. The amendments should follow a thorough analysis of the existing problems. Basically, the amendments should be to the Commission delegated regulation 2017/653 and there should be only minor level 3 measures that only interpret the requirements laid down at Level 1 or 2. Futhermore, they should be subject to a public consultation in order to get feedback by manufacturers and distributors of PRIIPs as well as representatives of consumers.

Before we comment on the questions raised in the Consultation paper we want to highlight some of the major problems with PRIIPs that should be considered when deciding how to proceed further:

1. **KIDs contain false and misleading information**

The Key Information Documents (KIDs) that are drafted in full compliance with the legal requirements laid down at Level II contain information that can be false and misleading for investors. Manufacturers and distributors of PRIIPs are confronted with many questions regarding the contents of the KIDs. Most of them have introduced further explanations to adequately inform investors of the products. While we see and appreciate the efforts to address some of the issues through Q & As, they are not sufficient to rectify all problems stemming from Level II measures.

Many supervisors and regulators are well aware of the problems. Just to name a few:

- With regards to KIDs for OTC derivatives, the ESAs have stated in their Q & A that "*the prescribed wording creates a risk that the retail investor will be misinformed about the characteristics of the product*" and have adjusted the text laid down at Level II. Further modifications via Q & A have already been published, other aspects are discussed.
- On January 24 2018, the FCA has stipulated that the performance scenarios can be misleading.

- On May 11 2018, the German government has stated in a reply to a parliamentary question that they are aware of the problems. The German government has claimed that the problems caused by EU regulations need to be addressed at European Level.

2. Review of Delegated Regulation 2017/653

Due to the amount of problems caused by the methodologies foreseen at Level II, we strongly ask to prioritize the legislative review of the PRIIPs regime. In the interest of effective investor protection, the risk of false or misleading information in the PRIIPs KID should be eliminated as soon as possible. Such an initiative is also being requested by many consumer organizations who likewise have stated their concerns regarding the contents of the KIDs and the effect they may have on consumers.

From our point of view, at least the following problems should be addressed in the review process foreseen in Art. 33 of the PRIIPs Regulation:

- The scope of the PRIIPs Regulation is not fully clear with regard to different products (especially foreign exchange derivatives and corporate bonds), which creates legal uncertainty whether some of these products fall under the PRIIPs regulation.

- The methodology laid down at Level II to calculate the performance scenarios and costs causes major problems. The scenarios displayed in many KIDs are overly optimistic and can lead to false expectations by investors. The PRIIPs standards require calculation of future performance scenarios on the basis of past performance figures for the last five years. For most products this means that the excellent market performance of the last five years is indiscriminately projected into the future.

- In many cases the methodology foreseen at Level II to determine transaction costs for funds results in misleading information on costs such as negative cost figures. E.g. the methodology requires to determine transaction costs as the difference between the execution price and the mid-market price of an asset. It assumes that in every market and for every asset, there is a valid and determinable “arrival price” as a reference for the calculations. This is absolutely not the case.

- With regard to OTC derivatives we would be very happy if the Commission reconsidered whether these products are in scope of the PRIIPs Regulation since in most cases OTC derivatives are no investment products. As mentioned above, the ESAs have already altered the prescribed wording in the KIDs for OTC derivatives. If the Commission is nevertheless of the opinion that OTC derivatives are within the scope of the PRIIPs Regulation, the Commission should at least foresee another KID template taking account of the particularities of OTC derivatives.

3. Amendments proposed in the Consultation Paper are insufficient

Many of the problems mentioned above have not been addressed in the Consultation Paper. The amendments that have been proposed in the Consultation Paper will not solve the immense problems. On many occasions, the ESAs have pointed out that within the short time frame it is not possible to develop new approaches or methodologies (for example pages 5, 10, 12 of the Consultation Paper). Furthermore, the ESAs have stated that the new proposals can not be subject to consumer testing (see page 10) so that the effect the amendments will have on consumers remains unclear.

With regard to the amount of problems identified with the existing methodology it is indispensable to carefully examine the problems and develop new approaches that need to be consulted and tested by consumers.

4. Prolongation of the exemption period for funds

UCITS and other retail funds are currently exempted from the scope of the PRIIPs Regulation until 31 December 2019 (Art. 32 Reg. (EU) No 1286/2014). In the absence of legislative actions, the exemption from scope will expire. Hence, retail funds will be bound to produce PRIIPs KIDs from

	1 January 2020 onwards. One of the major issues of the review foreseen in Art. 33 is the decision whether the exemption period for UCITS and other retail funds will be prolonged. Otherwise, funds would fall within the scope of the PRIIPs regulation, so that retail funds will be bound to produce PRIIPs KIDs from 1 January 2020 onwards. Art. 33 para 1 subpara. 2 explicitly states that the review shall assess whether the transitional arrangements shall be prolonged. We have heard that the Commission is actually planning to replace the existing provisions on key investor information in Directive 2009/65/EC without carrying out a comprehensive review of the existing requirements under PRIIPs and the problems they cause. The decision to extend the scope of the PRIIPs regulation to funds raises strong concerns as long as the immense problems caused by the actual provisions have not been tackled in a comprehensive review process. It would be detrimental for investors to receive KIDs for funds that contain misleading information. Furthermore, expanding the scope of PRIIPs to funds irrespective of the massive problems would run counter the principle of better regulation. In the interest of effective investor protection the Commission should therefore propose to extend the exemption period and the period for the review as it has been proposed by the European Parliament. The extension would leave room to carefully examine the existing problems and develop adequate solutions. On this basis the legislator should decide whether to extend the PRIIPs regulation to funds. Not only for manufacturers but also for distributors of funds it is extremely important that the decision how to deal with funds is taken as soon as possible so that they can adjust their IT systems and process flows in order to provide the required document. We therefore kindly ask to decide on a quick fix of Art. 33 of the PRIIPs regulation as soon as possible. A quick fix would only require a change of dates and should be accompanied by a clear statement to address the existing problems and to propose adjustments in the due course of the PRIIPs review.	

	Comments Template for Joint Consultation Paper concerning amendments to the PRIIPs KID (JC 2018 60)	Deadline 6 December 2018 23:55 CET
Q1	No. Information on past performance should not always be included in the KID where it is available. We do not see that the inclusion of past performance will be of benefit for the consumer. The major problem with the performance displayed in the KIDs is that in many cases the figures are overly optimistic which might be misleading for investors. The problem goes back to the requirement to calculate the future performance scenarios on the basis of past performance figures. For most products this means that the excellent market performance of the last five years is indiscriminately projected into the future. As the ESAs state in the Consultation Paper, this problem will not be solved by the amendments proposed (s. page 12). From our point of view, the problem will even be compounded if not only the overly optimistic future performance will be displayed (which is derived from the past performance) but also the past performance (which is the ground for the future performance). The investor`s impression that he will generate high yields will be fostered if past and future performance will be displayed. This type of information could only be included in case of UCITS in case of linear payout profiles. UCITS KIIDs currently include information on past performance. This is appropriate since past performance is the only way an investor may get an insight into the behaviour of a fund manager in a (historical) market environment. Simulating an active fund managers future investment decisions would be arbitrary. The same is true for structured products with a linear payout profile. However, is has to be clear that past performance is no indicator for future returns which may be very different due to different market conditions and / or different investment decisions of the fund manager. Therefore, there is still the risk that information on past performance is misleading. Apart from that, we see the problem that further figures will be even more confusing for retail investors who already are shown up to 12 scenarios. The additional inclusion of past performance would therefore contradict the idea of a short information that focusses on the main information and is easy to understand.	

	Manufacturers would be faced with the problem that they have to include another scenario in the KIDs that can not exceed three pages. Therefore, we object the idea to introduce past performances. Instead, the methodology to calculate performance needs to be improved in a thorough review process.	
Q2	As we have already mentioned in our answer to Q 1 we do not see any benefits for consumers in additionally introducing past performances in the KIDs. We fear that the introduction would even be detrimental for investors. As already mentioned in the consultation paper there is a risk that investors will base their decisions on the past performance, although it isn't meaningful for the future. For manufacturers it would be a big challenge to introduce another scenario in the KIDs that can not exceed three pages. In addition, there will generally be no past performance for certificates, so that past performances would have to be simulated. A complex set of rules would have to be drawn up, although the significance of such a simulation would be low. Therefore, any synthetic past performance is meaningless and may be even misleading. As we stated in our general remarks, in our view OTC derivatives can not be considered investment products and should not be in the scope of the PRIIPs-Regulation. Nevertheless we would like to point out that also for OTC derivatives there are no past performance data available at all. Finally, the introduction of past performances would lead to considerable effort in the technical implementation and create high implementation costs.	
Q3	As we have mentioned in our answer to Q 1 we oppose the idea to additionally include past performances in the KIDs.	
Q4	As we have mentioned in our answer to Q 1 we generally oppose the idea to additionally include past performances in the KIDs.	

	If the ESAs should nevertheless come to the conclusion that past performance should be additionally displayed, than the approach should be limited to products where data on past performance is available. Otherwise, a complex set of rules would have to be drawn up for these products, although the benefit of such an additional simulation would be very low. Information on simulated past performance should not be included in the KID. Synthetic past performance is meaningless and may be even misleading.	
Q5	As we have mentioned in our answer to Q 1 we generally oppose the idea to additionally include past performances in the KIDs. Only in case of • classical mutual funds which do not replicate payout profiles of structured products, • structured products with linear payout like index tracker and • indices (in case of funds: benchmarks) with a high correlation it may be adequate to simulate the historical performance.	
Q6	As we have mentioned in the general remarks, the false and misleading performance scenarios that are calculated in full compliance with the Level II requirements are one of the major problems under PRIIPs. Many of the figures can be misleading for investors. This issue has to be addressed in a thorough review. In the meantime, it would be an improvement if the current explanation that the scenarios displayed are based on scenarios is refined. This would be in line with the approach of many manufacturers and distributors of PRIIPs who have introduced disclaimers in their communication with investors warning them not to rely on the figures displayed in the KIDs. In this respect we want to highlight that the amendment of the narrative explanation can only be an interim solution until the current methodology to calculate performance has been replaced by	

	a methodology that leads to realistic figures displayed in the KIDs. The amendment of the disclaimer can under no circumstances replace a thorough review of the current methodology. The proposed amendment on page 16 can be misleading. The scenarios are not an indication of “the range” of possible returns. The scenarios displayed in many KIDs are overlay optimistic and therefore do not indicate the range of possible returns. Furthermore, retail investors should get the clear message that market developments can not be predicted.	
Q7	The scenarios displayed on page 17 clearly demonstrate that it would be detrimental for investors if past and future performance is displayed in the KIDs. Investors would hardly be capable to understand both tables and the different reasoning behind the figures. For manufacturers it would furthermore be impossible to display both tables without exceeding the three page limit. The idea to limit the presentation to two future performance scenarios (page 19) would either be no improvement. If the four scenarios display unrealistic figures (which is the case in many KIDs), it would be no benefit to withdraw two of the scenarios which means that two others would still be displayed. The performance scenarios can only be improved if the methodology laid down at Level II becomes subject of a comprehensive review. The same applies to the idea to present the performance scenarios in a graph that shows a range (page 20 and 39). The graph that show as a range suggest that values outside the range are not possible. That would be a wrong conclusion and therefore misleading. Finally, the idea to extend the historical period used to measure performance (p. 21) would not resolve the general problems. As the ESAs have stated, the impact of the approach would be very limited if the extension were introduced in 2020 (which means that the financial crisis would not be reflected). Therefore, the approach can not a substitute a thorough review of the current methodology and its comprehensive weaknesses.	

Q8	Generally, the only way to accurately describe the future is by means of an "if …then…" approach based on the final payout profile, i.e. it is accurate to state "if at maturity the underlying is at this level the payout will be XY EUR". In this case, no further explanation or disclaimer has to be added. If the ESAs / the legislator should decide, that due to the short time frame it is not possible to take over the "If….., then….." approach, we suggest at least to delete the interim scenarios in a quick fix. In our opinion, only the scenario for the recommended holding period should be shown, as the intermediate scenarios can contain unrealistic values and therefore have no added value for the investor.	
Q9	With regard to products with autocallable features we support the approach that performance is only shown at the intermediate holding period up to the call or cancellation (page 25). This approach takes account of the particularities of the relevant products and would lead to more realistic figures displayed in the KIDs. We welcome the possibility of adding optional texts in the narratives for the risk indicator as proposed under 4.2.3 of the Consultation Paper. The extension of the possibility to add additional information would help manufacturers to introduce further explanations that take account of the particularities of the relevant product. We do not think that the inclusion of examples of what could be stated in this context would provide added value, because of the wide scope of the PRIIPs-Regulation. We agree with the intention that the warning in Annex III Point 3 (a) of the PRIIPs Delegated Regulation is only applicable for PRIIPs where the SRI is less than 7. Regarding the narrative for performance fees additional flexibility is welcome.	

	4.2.1: On the 3% lump indication proposal for RIY: This issue has to be tested and therefore addressed in a thorough review.	
Q10	As we have already mentioned in our general remarks, the exemption period for funds has to be prolonged. The prolongation of the exemption period should be accompanied by a clear signal that a thorough review of the current requirements is carried out. In the process of the review the legislator has to decide on the relevant amendments to consider the particularities of funds when drawing up KIDs for funds. We strongly oppose the idea mentioned on page 30 that the UCITS KII may still be provided to professional investors even if for retail investors the KID has to be provided. This would mean that UCITs managers have to draw (and update) two different documents. Furthermore, this would mean that professional investors would receive valid information while retail investors would receive a document that is generally considered to be misleading. We do not see that the amendments proposed under 4.3.2 to 4.3.5 would significantly improve the quality of the KIDs for funds. The immense problems that the ESAs have mentioned in the Consultation Paper will not be solved with the amendments proposed. This would mean that from 2020 onwards retail investors who purchase funds will receive information that is far less reliable than the actual information. Therefore, we fully support the prolongation of the exemption period for funds and the postponement of the review of the PRIIPs regulation that have recently been proposed by the European Parliament.	
Q11	As mentioned above most of the amendments proposed would not improve the poor quality of the KIDs. Nevertheless, the implementation would cause high costs for manufacturers. This result is reflected in the table under 5.1.4 where for most measures the costs exceed the benefits by far.	
Q12		

	Comments Template for Joint Consultation Paper concerning amendments to the PRIIPs KID (JC 2018 60)	Deadline 6 December 2018 23:55 CET
Q13		