BETTER FINANCE
The European Federation of Investors and Financial Services Users
Fédération Européenne des Épargnants et Usagers des Services Financiers

BETTER FINANCE's feedback to the FCA's call for input: PRIIPs Regulation- initial experiences with the new requirements

***BETTER FINANCE**, the European Federation of Investors and Financial Services Users, is the dedicated representative of financial services users at European level. It counts about fifty national and international members and sub-member organizations in turn comprising about 4.5 million individual members. Our organization acts as an independent financial expertise centre to the direct benefit of the European financial services users (shareholders, other investors, savers, pension fund participants, life insurance policy holders, borrowers, etc.) and other stakeholders of the European financial services who are independent from the financial industry. As such its activities are supported by the European Union since 2012.*

***BETTER FINANCE** is the most involved European end user and civil society organisation in the EU Authorities' financial advisory groups, with experts participating in the Securities & Markets, the Banking, the Occupational Pensions and Insurance and Reinsurance Stakeholder Groups of the European Supervisory Authorities; as well as in the European Commission's Financial Services User Group (FSUG), and in the European Financial Reporting advisory Group (EFRAG). Its national members also participate in national financial regulators and supervisors bodies when possible.*

For further details please see our website: http://betterfinance.eu/

As representative of investors and financial services users, BETTER FINANCE has raised at several occasions[1] its concern regarding the PRIIPs KID legislative framework in term of investor protection and in particular the fact that standardised, **easily comparable and long-term past performance data (of both the product and its chosen benchmark) are eliminated** under the PRIIPs delegated regulation. The elimination of standardised, easily comparable data on past performance is a regressive step for investors and will reverse some of the partial progress made on making the investment market more transparent and accountable.

Also, we warned the EU legislators and authorities [2] against the use of future performance scenarios that will not help investors make investment decisions, and even mislead them, as they are based on 5 year past performance, and will provide excessively optimistic performance scenarios, as the last six years were bullish both or equity and for fixed income markets.

[1] BETTER FINANCE's press release - The Key Information Document will provide investors with misleading and non-comparable future projections ; http://betterfinance.eu/media/latest-news/news-details/article/better-finance-supports-efamas-position-on-flawed-priips-approach-to-cost-and-performance-disclosur/; BETTER FINANCE's press release - The EU Authorities' draft implementation rules on Key Information for retail investment products must be thoroughly improved in order not to hurt savers' and investors' protection

[2] Letter from the FSUG - The elimination of past performance in the contents of the Key Information Document, and its replacement by "future performance scenarios"http://betterfinance.eu/fileadmin/user_upload/documents/Joint_Open_Letters/en/FSUGlettereliminationpastperformance__2_.pdf

Lastly, cost disclosure are mostly not comparable between even similar products, as the "reduction in yield" approach is based on the recommended holding period of each product manufacturer and on only one of the four future performance scenarios described (without specifying which one in addition), and as the other approach is based on amortizing the cost over specific holding periods which are not automatically the ones relevant for a given investor.

Due to the detriment caused by the PRIIPs KID delegated regulation to individual investors, BETTER FINANCE is asking for:

- a minimum three years extension of the exemption of UCITS funds and other funds already following the provisions of the KIID Regulation. Such exemption would enable at least fund investors to continue to enjoy the benefits of the current 2-pages KIID that provides information on long-term past performance (including comparison between benchmarks).
- An early review the PRIIPs Regulation (1286/2014) and the delegated Regulation (2017/653).

Q1: Are you experiencing problems with clarifying the scope of the PRIIPs Regulation? Please provide examples of product types where you believe there is uncertainty as to whether they are in scope.

The PRIIPs regulation has a wide scope and doubts remain on whether corporate bonds should fall under the PRIIPs scope.

In Italy and Germany, individual investors cannot de facto buy corporate bonds anymore as issuers are now asked to design and publish a PRIIPs KID in addition to the Prospectus and Prospectus Summary.

Straight listed securities such as equities, equity warrants and plain vanilla corporate bonds should be excluded from the scope of PRIIPs.

Q2: Have you tried to resolve this uncertainty and faced difficulties in doing so? If so, please provide details and examples of the difficulties you have faced.

N/A

Q3: Have any of your calculations of transaction costs under the slippage methodology led to negative, zero or unexpectedly large transaction costs? If so, please provide examples, together with the full calculation of how the output has been obtained, and explaining any assumptions that have been made.

N/A

Q4: If you are an investor (or represent investors), what has been your experience with disclosures of transaction costs? Have you found these disclosures helpful in making your investment decision? Conversely, have you come across disclosures of costs which you found difficult to understand, or which you felt unable to rely on? Please provide supporting examples and evidence.

The methodology regarding the disclosure of all ex-ante and ex-posts charges designed by the ESAs (level 2) raises questions.

In practice, investors are being presented with a complex and misleading description of the costs. In some cases, we even found information on "negative transaction" costs which is absurd (a cost cannot be negative, as it would not be a "cost" anymore), misleading for investors who could conclude that they are making money out of the transaction costs. This is due to the highly theoretical method to estimate transaction costs. This method must be changed, using actual recent averages.

Q5: Please provide your views, supported by evidence, on the SRI and on the extent to which the required and optional sections of the risk narratives enable the risks of a product to be adequately explained to consumers.

N/A

Q6: Do you have any examples of products where the prescribed methodology for assessing and presenting risk leads to a counter-intuitive or potentially misleading SRI? If so, please provide examples.

N/A

Q7: Have you experienced any practical issues with the calculation and presentation of performance scenarios in the KID? If so, please provide details so that we can identify any further practical difficulties not fully contemplated in our statement of January 2018.

BETTER FINANCE acknowledges that past performance *per se* and in absolute and nominal terms is not a reliable predictor of future performance. The new KID is worse, as it is actually using past performance to compute and disclose future performance scenarios. These future performances are violating the requirements of the delegated Act of MiFID II which state that any future performance information should be accompanied by a prominent warning that it is not reliable"[3].

These future performances based on past performance will be highly "misleading" for several reasons:

- Absolute performance without reference to a benchmark has little to no meaning and is misleading over the mid-to long term as it is nominal (not real, i.e. after inflation).
- The impact of charges on performance is only required to be disclosed for the "intermediate" scenario, which consequently could be interpreted falsely as being the most probable scenario
- Based on the four scenarios, the information on performance provided will not be clear and understandable to the majority of EU savers.
- Scenarios are linear: therefore obviously most probably wrong and again misleading
- The wide variation between the scenarios does not provide any useful guidance to investors
- They follow the recommended holding period chosen by each product manufacturer , that can be different even for comparable products, making any comparison from one product to the other extremely difficult.

[3] Article 44(4)(d), MiFID II Delegated Act 2017/565

ESMA itself stated that "*there may also be value in assessing whether a fund has been able to achieve the objectives referred to in the fund documentation.*[4]"

Without any information on long-term past performance including comparison between benchmarks as required in the current UCITS KIID, EU citizens are prevented from:

- Knowing if the product has generated any positive performance in the past or has reduced the value of their savings
- 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

Q8: Have consumers who are using KIDs to make investment decisions encountered any issues with the performance scenarios presented to them?

Yes, major issues:

The use of future performance scenarios is much more misleading than providing information on the past performance since:

- The use of scenarios (favourable, moderate, unfavourable, stress) that are not probability weighted run the risk of making the average retail investor believe that the "moderate" scenario is the most probable, which is not the case
- These performance scenarios are built on positive market return of the recent years providing investors with too optimistic performance scenarios.
- The presentation of the 4 scenarios is too complex for the average retail investors to understand

The main objective of the KID was to provide information to retail investors in a standardised format to allow them to compare the products. However, in reality those performance scenarios do not allow investors to compare the products. The UCITS KID was (and still is for UCITS funds) in fact much more useful as it discloses the standardised historic long-term (10 years minimum) performance together with the benchmark selected by the provider (including a prominent warning that such forecasts are not a reliable indicator of the future performance).

Q9: Are there any other experiences with the implementation of (and compliance with) the PRIIPs legislation that you wish to raise with us? Please include evidence to support the points you make.

N/A

Q10: As a user of the KID what is your overall experience of the information provided? Please provide examples of where the information received is useful in informing investment decisions.

N/A

[4] ESMA recommendation February 2016 communication on closet indexinghttps://www.esma.europa.eu/sites/default/files/library/2016-165_public_statement_-_supervisory_work_on_potential_closet_index_tracking.pdf