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FEEDBACK STATEMENT

**A guide to clear language and
layout for the
Key Investor Information
document (KII)**



Executive Summary

In this document CESR gives feedback on the responses received to the consultation on a guide to clear language and layout for the Key Investor Information document (KII) published in July 2010 (Ref. CESR/10-532, hereafter 'the guide'). The guide describes ways of meeting the regulatory objective for Key Investor Information (KII) to achieve the clarity and simplicity of presentation that is required by retail investors.

Feedback was generally positive but a number of clarifications have been made in the final version (Ref. CESR/10-1320, published alongside this feedback statement). CESR has also taken the opportunity to explain that certain points raised by respondents fall outside the scope of the guide and relate in fact to the provisions of the revised UCITS Directive and related level 2 legislation.



Background

1. CESR published a consultation paper on A guide to clear language and layout for the Key Investor Information document (Ref. CESR/10-532) on 20 July 2010. The deadline for responses was 10 September 2010. CESR received 19 responses from a range of stakeholders, including individual investment managers and associations. A list of non-confidential respondents to the consultation is included in Annex 1.

General comments

2. Several respondents were of the view that the length of the KII was too short and made the inclusion of all required information, while adhering to the principles of clear language, very challenging.
3. Some respondents regretted that CESR's recommendations were based on the English language and referred to other publications and sources available only in English – given that the KII will have to be written in local EU languages. One of them felt that the criteria for 'clear language' may differ to some extent from one language to another and regard should be had to initiatives by other national regulators in the EU (such as a 'savings glossary' developed by some competent authorities). This concern was also shared by one contributor who was of the view that CESR should consider what the KII would look like in other languages and whether there was a need for various country-specific style guides/glossaries.
4. One respondent sought confirmation that CESR's guidelines did not constitute a mandatory elaboration of Regulation (EU) No 583/2010 on Key Investor Information (hereafter 'the KII Regulation') in respect of e.g. the font size to be used and other specific aspects of the KII. In addition, the same respondent was surprised by the statement that KII 'should grab readers' attention and encourage them to read it' as they felt this contradicted the requirement that KII should not become marketing documents.
5. Several respondents encouraged CESR to create a common glossary to be available in several languages to avoid any misinterpretation and facilitate comparison between funds by promoting the use of a common language.

In light of the comments received from stakeholders, CESR decided to specify in the final guidelines that this document was a statement of good practice and did not constitute binding guidance on UCITS or their management companies.

CESR took the view that a clear distinction could be drawn between designing the KII in a way that makes it appear important and attractive to the investor but avoids presenting it as a marketing document. The wording of the relevant text in Part 3 of the guide has been amended in order to clarify this.

On the length of the KII, this is governed by the UCITS Directive and the accompanying level 2 Regulation and is therefore outside the scope of the guide. As regards the choice of English in the preparation of the guide, this reflects CESR's traditional working practices. However, CESR recognises the value in developing language-specific guidance in order to help spread best practice across the EU; as such, CESR members have agreed to consider developing such guidance for their own jurisdictions.

As suggested by some respondents, CESR modified the guide in order to refer to 'average retail investors' instead of 'layman' or 'consumers'.



Q1: Do you agree with the concepts in Part 2 and that they should form the basis for writing a KII?

6. The guidelines in Part 2 of the consultation paper were mostly welcomed by respondents but with the following comments and suggestions.
7. According to one stakeholder, it may be worthwhile compiling sample lists of jargon which should be avoided in all official languages of EU Member States.
8. Some respondents stressed that the use of technical vocabulary (not technical jargon) could not be avoided and therefore recommended the use of a glossary that could be set up by national regulators and which would facilitate the translation of the KII from one language to another.
9. One respondent believed there was a contradiction between the possibility for a management company to use cross-referencing in order to avoid reliance on jargon and the principle in Part 1 according to which firms must 'not seek to bypass the page limit by... relying on cross references to cover information material to understanding the investment'.
10. One stakeholder took the view that it should be made clear that the civil liability of the fund would not be invoked if the wording in the KII differed from the wording in the full prospectus of the fund, as long as there are not substantial discrepancies.

Concerning the use of cross-referencing to tackle the issue of jargon, CESR made it clear in the guide published for consultation that if such a practice results in an excessive number of cross-references, the use of jargon should be questioned.

As noted above, CESR acknowledged that guidance on the use of language at a national level would be helpful. Therefore, CESR agreed that national regulators may provide language-specific guidance.

Q2: Do you have any alternative or additional suggestions?

11. Two respondents felt the guide should be more flexible for UCITS reserved to professional investors.
12. One respondent was of the opinion that the guide would be enhanced by inclusion of examples of good practice, in line with the FSA's 'Good and poor practices in key features documents'. Another stakeholder felt that the guide should be explicit as to whether there are any permitted exceptions to the requirements on page length, such as when management companies prepare large print versions of the KII in order to meet the needs of partially-sighted people.

The points raised above fall outside the scope of issues that can be addressed by the guide and are in fact related to the text of the UCITS Directive and the level 2 KII Regulation.

Q.3 Do you agree with the concepts in Part 3 and that they should form the basis for designing a KII?

13. CESR's proposals were overwhelmingly welcomed by respondents and only a few comments were made. One respondent commented that the limitation to 50-75 characters per line may be too restrictive, while another one felt that a font size of 9 was legible.

In light of the general agreement expressed by respondents, CESR confirmed its proposals in the final version of the guide. However, CESR did clarify that the space between lines should be



balanced with the font size and that newspaper columns could be used where appropriate.

Q.4 Do you have alternative or additional suggestions?

14. It was stipulated by one respondent that risks and rewards should be balanced in terms of the amount of text used for each in order to avoid artificially promoting the potential benefits of the proposed investment.

While CESR fully agrees with the objection of not artificially promoting the potential benefits of the proposed investment, it considers that this aim is already sufficiently promoted by other requirements (e.g. the length restriction and the need for the KII to be fair, clear and not misleading). Taking into account the strong support from stakeholders, no other changes were made to Part 3 of the guide.

Q.5: Do you agree with the concepts in Part 4 and that they should form the basis for assessing the content of each section of a KII?

15. CESR's proposals were broadly supported by respondents to the consultation although some specific comments were made.
16. One respondent was surprised by the statement that 'some emerging market risks' may not be reflected in the SRRI and believed that this sentence should be reconsidered or at least justified.
17. According to one respondent, the information on the effect of transaction costs on the performance would be better placed in the Charges section than Objectives and Investment Policy. The same respondent considered that it should be possible to remove the reference to performance fees and entry/exit charges for funds that do not have such fees to avoid confusing investors.
18. One trade association was of the view that avoiding any copy-out of the prospectus might prove difficult with a view to achieving a balanced and consistent wording. The same respondent took the position that the prohibition of words such as 'performance' or 'return' alongside words such as 'security' was overly restrictive. Concerning the risk and reward profile, some members of this trade association were worried about the legal risks arising from the requirement to describe in plain and simple terms the nature of the risks incurred by investors.

CESR considered it appropriate to revise the wording under the heading 'Objectives and Investment Policy' so as to state that in certain circumstances it may be necessary to go beyond the specific prospectus wording in order to fulfil legal requirements.

In the advice that CESR delivered to the European Commission in October 2009 on the format and content of KII (Ref. CESR/09-949), CESR recommended that the information on the effect of transaction costs on performance be included in the Objectives and Investment Policy section. This recommendation was based on the results of the consumer testing, which suggested that investors had difficulty comprehending information about transaction costs when included in the Charges section. More specifically, it was felt more appropriate to include the information in the Objectives and Investment Policy section as the investment policy of the UCITS is the key factor in determining whether transaction costs are likely to be significant. This suggestion was incorporated into the level 2 KII Regulation (see Article 7(2)(e)).

One of the principal aims of the KII is to allow comparability of UCITS. In order to help achieve this, charges information is to be presented in a harmonised table with specific sub-headings for every UCITS. As such, it is not possible for funds that do not have performance fees or entry/exit



fees to deviate from this harmonised presentation. However, CESR has clarified in the guide that where no charge is payable under a particular sub-heading, 'none' or 'not applicable' should be put in the relevant field.

Q.6: Do you have any alternative or additional suggestions?

19. Two respondents asked for clarification on whether CESR's proposal that the KII should indicate how much of the fund is exposed to a particular risk meant that management companies should give a precise percentage.
20. CESR was encouraged by one stakeholder to provide more detailed, process-based guidance to determine what information is and is not material in the context of KII, and which risk disclosure can safely be left to the prospectus.

CESR considered that management companies should decide the best way to communicate the proportion of a fund that is exposed to a particular risk.

Article 78(3) of the revised UCITS Directive already indicates which elements of the KII should be seen as 'essential'. In the context of risk and reward disclosure, the level 2 KII Regulation (see Article 8(5)) gives further detail on which types of risk should be included in the KII if they are material. CESR took the view that further prescription in this area would not be appropriate and that the decision on whether a particular piece of information is material will depend on the individual UCITS.



Annex 1: List of Respondents

	Name of respondent
1.	Association of British Insurers
2.	Association Française de la Gestion Financière
3.	Association of the Luxembourg Fund Industry
4.	Bundesverband Investment und Asset Management
5.	Caixa Geral de Depositos
6.	Capital International
7.	Dansk Aktionærforning
8.	European Banking Federation
9.	Ebsylon Sarl
10.	European Fund and Asset Management Association
11.	Investment and Life Assurance Group
12.	Inverco
13.	Joint Associations Committee (International Swaps and Derivatives Association and International Capital Market Association)
14.	Italian Banking Association
15.	Legal and General
16.	Austrian Federal Economic Chamber