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:	Dufas		
Disclosure of comments:	Please indicate if your comments should be treated as confidential:		Public
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Reference	**Comment**		
General Comments	Dufas (*the Dutch Fund and Asset Management Association*) [1] welcomes the opportunity to respond to the Joint Consultation Paper concerning amendments to the PRIIPs KID as published by the ESAs' on 8 November 2018. In general, we appreciate that the ESAs' in their consultation have proposed solutions with regard shortcomings of current performance scenarios' contained in the PRIIPs KID. Furthermore, we do welcome that the ESAs' consider adapting UCITS solutions into		

[1] *The Dutch Fund and Asset Management Association (Dufas) promotes the collective interests of asset managers, investment firms and custodians, operating on and from the Dutch market place – both Dutch and foreign parties. Dufas has a commercial focus, aimed at creating both institutional and retail business opportunities for its members. Central to this is the promotion of an optimal business climate for asset management in the Netherlands. A level playing field for free supply of investment products and asset management services within the European Union and a broadening of the market for investment products are key. Dufas represents over 90% of the Dutch asset management market, both retail and institutional business. Next to independent asset management firms, self-managed (real estate) funds and custodians, Dufas membership is comprised of asset management firms that are linked to banking, insurance and pension funds. For more information, see: www.dufas.nl*

the PRIIPs Delegated Regulation. However, apart from concerns we have about the timelines, the legislative process which have being followed, and the limited content of this consultation, we would emphasize the following:

- **Interest of the retail investor**: Dufas stresses the importance of providing concise information on investment funds in order for retail investors to be able to base their investment decision. However, Dufas also believes that rushed changes, although necessary, do nothing to provide trust to (retail) investors that the PRIIPS KID is a document that provides them concrete and correct information. Although the idea behind this 'quick fix' is the retail investor, fixing the PRIIPs KID to some extent, but not in total and (perhaps) amending the PRIIPS KID on several occasions is not at all helping the retail investor. To establish trust we are in favour of thoroughly thinking through solutions taking into account all relevant parameters. It is therefore that we do believe that consumer testing of the information documents such as the PRIIPs KID is essential in achieving the goal of properly, but also to effectively inform the retail investor.
- **Transaction costs**: Dufas stresses the importance of a full review of the current transaction calculation methodology, in particular calculating implicit transaction cost which is not addressed in this consultation. We do believe that a careful scrutiny is required, particularly where performance scenarios' contained in the PRIIPs KID also need to take into account the cost calculations as prescribed by PRIIPs. Dufas regrets that the ESAs are focusing this consultation only on performance scenarios while the important issue related to the methodology used to calculate transaction costs, and in particular calculating implicit transaction cost is not addressed in this consultation. For this topic we refer to EFAMA's comments made their position paper of June 2018 "*EFAMA's evidence on the PRIIP KID's shortcomings*", and their response to this consultation. Particularly, as also currently under MiFID II the retail investor is being informed on total cost and charges on the investment services and the costs of the investment products based on the controversial PRIIPs

	methodology. Hence, here again the interest of the retail investor is in stake. Dufas therefore calls upon the ESAs' and the co-legislator to really look into the issues which have been raised by the financial industry, and initiating getting into a constructive dialogue with market parties; and ▪ **UCITS Exemption:** Furthermore, we do emphasize that in the interest of the retail investor, there is no merit in having a duplication of information documents in place, in the event the UCITS exemption which expires 31 December 2019 contained in PRIIPs will not be extended. Hopefully, the European Commission and the co-legislators will reconsider their position on this. Finally, for the avoidance of the doubt, Dufas fully supports the response of EFAMA on this consultation.	
Q1	Dufas generally agrees that information on past performance should be included in the PRIIPs KID, where it is available. As this information is already available in the UCITS KIID. However, we do have two reservations: First of all, past performance figures currently contained in the UCITS KIID do include ongoing charges and excludes entry and exit costs. However, performance calculation under the PRIIPs KID methodology differentiates from the calculation under the UCITS methodology. For example the implicit transaction costs is currently not part of the calculation of net returns under the UCITS methodology. Recalculating these returns will rise confusion among retail investors as different documents show different net returns in a specific calendar year, which is not preferred. Therefore, we do agree that past performance figures of UCITS can be used in the PRIIPs KID, provided that (i) UCITS switching at any moment to the PRIIPs KID can still use the past performance figures as already calculated in accordance with the UCITS methodology, and (ii) the current PRIIPs methodology on the calculation of transaction costs will be revised, which may also be reflected at the long run in more appropriate past performance figures. And/or alternatively, the ESAs' should provide more guidance on how the past performances should be calculated and	

	how to deal with differences between the calculation under PRIIPs and the calculation under UCITS. Secondly, we do envisage substantial practical problems with the introduction of past performance figures into the current PRIIPs KID framework. By adding more information and graphs, it will be a challenge to fit all information on the limited space of three pages. Therefore an additional page may be needed, but that also requires amendment of PRIIPs Level 1. The question arises, however, whether all such information can be included without affecting the overall legibility of the PRIIPs KID.	
Q2	As mentioned above under Q&A 1, past performance figures currently contained in the UCITS KIID do include ongoing charges, but do not also include transactions costs, including implicit transaction cost calculated in accordance with the PRIIPs methodology. Therefore, for UCITS having already past performance figures in place based on the UCITS methodology, it would be impossible to produce past performance figures taking at hindsight the PRIIPs methodology into account. Furthermore, we understand that structured UCITS are currently not required to include the past performance section. The same applies to structured UCITS and AIFs that already produce a PRIIPs KID. As mentioned, where past performance information is available such as for UCITS, we agree to include such information. Where that is not the case, such obligation should not be imposed.	
Q3	Dufas agrees that if information on past performance should be included in the PRIIPs KID, we do believe that this information should be based on the current UCITS KIID framework. Particularly, given the standardization of the information and because of the fact that the UCITS KIID framework is in use for more than seven years now. But here again with the caveat that past performance figures currently contained in the UCITS KIID do include ongoing charges, but do not also include transactions costs, including implicit transaction cost calculated in accordance with the PRIIPs methodology.	

Q4	Dufas disagrees that information on simulated past performance should be included in the PRIIPs KID where actual past performance is not available. Furthermore, we advise the legislator to make a clear difference between actuals and simulations in the presentation of past performances. Hence, Dufas stresses to only use actuals in presenting past performances, except for the situations described in article 19 (of EU Regulation 583/2010), i.e. in situations of (a) a new share class and comparable share class of the same fund being created ; or (b) in the situation of a feeder fund; and (c) in case of a legal merger, where the track record of the receiving fund will be kept. In addition, the same applies in case of change of legal structure within the same domicile (preferably also in case of a change of domicile). In other cases simulations should only be used for future performances presentation. This will give investors a better understanding between the performance of existing products (which can show a past performance) and new products (which lack a past performance, but only show a future expectation).	
Q5	We refer to our answer on question 4 above. In so far simulated past performance should be included in the PRIIPs KID, Dufas believes that this should be done in the same way as in the UCITS KIID. Preferably with a standardized narrative.	
Q6	Dufas appreciates the flexibility with regard to the narrative explanations. However, we do have comments with regard to some narratives. Our first comment relates to the narrative proposed in relation to investment funds. The proposed sentence (page 16 of the Consultation paper) contains two parts: "*These are estimates based on relevant data from the past [x] years and does not take into account the situation where we are not able to pay you.*" For investment funds the second part of the sentence isn't relevant and looks misleading, as the assets of the funds are segregated from the product manufacturer ("We" in the sentence) and safeguarded by an independent depositary. Please give the option to leave out this part of the narrative.	

	Our second comment relates to the narrative proposed in relation to costs. The proposed sentence (page 17 of the Consultation paper) reads as follows: "*The figures shown include all the costs of the product itself and include the costs of your advisor or distributor. The figures do not take into account your personal tax situation, which may also affect how much you get back*." We do wish to have and maintain flexibility as to the narrative whether or not distribution costs are included or not. Distributions costs normally should not be included as first of all PRIIPs manufacturers do not always know the costs of the distributor. Secondly, should the PRIIPs manufacturer be aware of cost of all distributors which distribute their products, this will force them to create a number of KIDs' with different costs figures corresponding with the number of distributors, which moreover forces the manufacturer to monitor changes of costs by such distributors.	
Q7	**Regarding use of risk free rate:** In theory Dufas agrees with the proposal to a 'risk free rate' to generate a more realistic future outcome in the moderate scenario, however, the risk free rate is a theoretical approach and may be interpreted differently among product manufacturers, as one might use a cash return (US treasury, Euribor 1 month) and other might prefer to use German Bunds (and in particular a 5 or 10 year bund depending the Recommended Holding Period (etc). The risk free rate for investor in one country may be different for investors in another country, even if both invest in the same PRIIP's. Therefore more guidance will be needed on how to use the risk free approach and on which risk free rate should be used as a reference, to keep the outcome comparable among the different product manufacturers. Also an example would be very appreciated.	
Q8	Dufas is positive about presenting information to retail investors in the form of a graph instead of tables, subject to the following comments. First of all, such graph or funnel as shown on page 39 of the Consultation Paper, should be based on a proper PRIIPs methodology. Where the PRIIPs methodology leads to too positive outcomes for future simulated performances this may be potentially misleading. This may particularly being emphasized by a graph as shown in the paper. A sound PRIIPs methodology, including the methodology for costs calculation, is therefore a pre-condition for any new presentation being	

	introduced. Secondly, here again, the question arises whether such graph. i.e. such funnel as shown on page 39 of the Consultation Paper, will fit in the prescribed limited number of pages of the PRIIPs KID. Thirdly, we can imagine that using graph or a funnel as shown on page 39 of the Consultation Paper may be better for a retail investor to understand. Particularly, where switching to a graphical presentation may allow in the future to combine both past performance data and future performance scenarios in the same graph. However, for any such change being made, thoroughly testing by consumers is in the opinion of Dufas required.	
Q9	**Regarding proposals 4.2.4:** In some cases the performance fee isn't taken by the product manufacturer, making the wording "We" in the proposed sentence misleading. It would be better to address who (which entity of entities) is entitled to performance fee or carried interest (where the same problem arises). This would be the case in the following but not limited number of situations: 1. Priips of a feeder, where the manager of the master is entitled to a performance fee / carried interest 2. Fund of funds, where one or more of the manager of the funds invested in, is entitled to a performance fee / carried interest. **Regarding proposals 4.2.1:** It is proposed that for the calculation of the RIY the assumption that the performance shall be 3% should be applied to all PRIIPs, instead of the use of the moderate scenario. This amendment may also increase comparability among products as costs would be less dependent on the performance estimations. However, we expect this will not increase transparency and understanding, as investors currently don't understand the difference between the redemption in yield and the ongoing costs on an annual basis (as the small difference between these costs - in the situation of	

	PRIIPs with linear costs models is due to the compounding effect over the recommended holding period), which is currently not explained in the standard narratives.	
Q10	Dufas took note of the ESAs' comments on page 30, which seems to reflect the legislative 'as is' situation: "*According to the UCITS Directive (Article 78), the UCITS KII currently needs to be provided not only to retail, but also to professional investors. Given that the PRIIPs Regulation applies to products made available to retail investors, the ESAs have worked under the assumption that should UCITS be required to provide a PRIIPs KID to retail investors the UCITS KII may still be provided to professional investors. However, this is also subject to any decision by the co-legislators on the exemption in Article 32 of the PRIIPs Regulation*." Dufas understands therefore from the ESA's, that without further changes, the UCITS KIID will remain in place, and may still need to be provided to professional investors. However, we call the legislator to also take action on changing the UCITS legislation on this point, once the PRIIPs KID is replacing the UCITS KIID for retail investors. We see no need to keep the UCITS KIID in place for professional investors as these investors are well equipped to be informed before investing with more specialized customized requests for proposals. And obviously professional investors are capable of digesting more complex information, and do not need to have UCITS KIID to base their investment decision hereupon. Furthermore, should professional share classes also be open to retail investors, in such situation where the UCITS KIID has been replaced by PRIIPs KID the asset manager should only be forced to produce one information document. This should not be duplicated by maintaining the obligation for UCITS providers to provide a UCITS KIID to professional investors.	
Q11	Dufas stresses that the switch over from the UCITS KIID to the PRIIP KID will carry substantial costs and time for the investment fund industry. We envisage that drafting new PRIIPs KID, because of IT timelines, including testing thereof, and making such KID's available to distributors on time takes a considerable amount of time. Such timelines may also be extended if the asset management industry may wish to use services of third party providers, which may be involved in providing necessary market data or market solutions. We estimate that for completion of such	

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