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:	Finance Denmark	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
Reference	**Comment**	
General Comments	Finance Denmark welcomes the ESAs' initiative to start addressing the shortcomings of the current PRIIPs KID. First, we would like to state that any amendment to the PRIIPs regulation should be in the best interest of the retail investor. There is a lot of important issues with the current regulation, which need to be addressed. Unfortunately, many of these issues are not addressed in this consultation paper. We understand the reasons behind the targeted amendments in this consultation, but we find it important that the work for other amendments continues without any delay. The Commission's decision to defer the PRIIPs regulation review to an unforeseen future date, does not change the need for a full-scale review to commence and be completed as soon as possible in order to address the most pressing issues. Rather than a "quick fix" of several targeted rules in the regulation as suggested in this consultation. We believe that an "over-all" review would be more beneficial for retail investors. Changing the PRIIPs KID now only to change it again soon will result in the fact that the retail investor will have to relate to and understand two different documents within a short period of time. We fear that such constant revisions will adversely impact retail investors' comprehension and confuse the retail investor. Furthermore, every time the PRIIPs regulation is changed the manufacture needs to change the it-system. There are costs every time the regulation is amended, and the it-system is changed. These costs will implicit affect the costs of the product and therefor in the end the investor. A "quick fix" at this moment in time is not in the best interest of the investor.	

	One of our main concerns is the missing clarity in relation to the scope for PRIIPs and calculation of the costs. We also see issues regarding the inclusion of UCITS and certain AIFs as of January 1st 2020 and ahead of the full review. It would not be in the best interest of the retail investor to "phase out" UCITS KIIDs by the end of 2019. This consultation paper shows that for the PRIIPs KID to replace the UCITS KIID 15 out of 39 rules in the UCITS KIID regulation needs to be moved to the PRIIPs KID regulation. Given the very limited scope of this consultation and the decision to defer the full review we are calling on the co-legislators to extend the exemption for UCITS. Lastly, we would like to raise our concerns regarding the process of this consultation. Stakeholders are only given four weeks to respond and are furthermore being told that there will be no further stakeholder consultation to test the ESAs' chosen solutions.	
Q1	Yes, we agree that it can add value for the retail investor to observe a graphic illustration of historical performance matched with a benchmark like it is known from the current UCITS KIID. Nevertheless, past performance should only be included for products where it makes sense and only if actual past performance exists. Therefor we also find that there should be no simulation of past performance. For UCITS it can make sense to include the past performance in the PRIIPs KID going forward as past performance is included in the UCITS KIID today. National Danish rules for marketing of AIFs to retail investors requires a two-pager with essential information almost identical to the UCITS KIID. The Danish two-pager for AIFs includes past performance. However, as always it will be very important to stress that past performance is not an indication of future performance. For other types of PRIIPs we find that in most cases past performance will not be relevant. For example, category I and III products, where typically no past performance exists, and simulating of past performance is expected to lead to misleading results.	

	In general, we would like to stress that analyzes ***must*** be performed before including other types of PRIIPs into the scope of the requirements taken from the UCITS KIID regulation and included in the PRIIPs requirements for all PRIIPs. The setup in the UCITS KIID regulation is developed with the purpose of giving information about UCITS. It can probably be relevant for similar product types (primarily AIFs), whereas for other types of PRIIPs it might not be relevant and in worst case it will be misleading.	
Q2	Yes. We agree to the challenges mentioned in the consultation paper and refer to our concerns raised above in question 1. Furthermore, we would like to add that past performance does not makes sense for structured products, OTC derivatives and closed end funds with a commitment phase, where there is no past performance. ○ Structured products are often based on a current theme or case, and subscription is offered for a limited time where the product has not been finally launched. Hence no relevant past performance will be available. ○ Past performance does not make sense for OTC products like SWAP, forward contracts and fx options. ○ Closed end funds with a subscription period where investor will sign up and make an investment commitment will not have any past performance. This will typically include PRIIPs mentioned in Annex II, point 4(c) of the delegated regulations. Past performance will often depend on particular events which may alter the behaviour of the product and affect price movements going forward. Such events could be misleading in relation to what to expect in the future (for structured bonds, price volatility and the bond part may alter the behaviour). Often simulating historical returns for structured products would be very misleading for a retail investor, because the exercise of embedded options can make the product look to advantageous compared to a realistic future scenario.	

	If simulated past performance were to be included, we find it very important that the rules for simulated past performance are clear and written in a way that that two different manufacturers will achieve the same result when doing the calculation on similar products. It important that it is not possible to compete on simulations – neither historical nor future simulations. Also, we find it important to mention that structured UCITS are currently not required to include the past performance section, as this information may not be relevant to understand essential elements of the product. New issues should generally be excepted from showing past performance as there are no past performance and past performance should not be simulated.	
Q3	We agree on the UCITS approach. As mentioned in our answer to question 1 we find it appropriate to use the approach used in the UCITS KIID for funds if past performance should be included in the PRIIPs KID. For other PRIIPs it will in many cases not be relevant at all to show past performance and we suggest just to leave the information out of the PRIIPs in those cases. See also our answer to the questions about simulated past performance. On that note. If past performance is included and the UCITS KIID is still required, then the two approaches should be aligned to avoid any confusion of the retail investor. Once again, we like to take the opportunity to stress the importance of only having one document with investor information as of 1st of January 2020.	
Q4	No. We cannot support a proposal to include simulated past performance in the PRIIPs KID going forward as we do not see that it will bring any value to the retail investors. Past performance should be based only on actual figures. The PRIIPs KID already includes simulated ex ante performance figures and adding more simulations will only confuse retail investors, who often do not understand the prerequisites for the simulations. Benchmarks may be used as a proxy where there is a suitable market.	

	If included, it will require a very firm explanation to the investors that this is not information based on facts and it is not at all an indication of future performance. Bearing in mind that the PRIIPs KID is intended to retail clients we see a big risk that the investors will be confused and rely on the simulated past performance as an indication of future performance. We are also concerned that the rules for the simulations will be complicated and, in the end, causing simulations to be misleading. If simulated past performance were to be included, we find it very important that the rules for simulated past performance are clear and worked out in a way that two different managers will achieve the same result when doing the calculation on the same portfolio. It important that it is not possible to compete forecasts – neither historical or future forecasts.	
Q5	As answered above we do not think simulated past performance should be included. If simulated past performance were to be shown in the PRIIPs KID, it should be aligned with UCITS KIID regulation (article 19). However, we currently do not see a way to make this so that it becomes comparable to what is in a UCITS KIID today. And since the intention for the PRIIPs KID is to be comparable between products, adding it would ruin such comparability. General comments to 1-5. We anticipate that when buying funds (which constitute most of the category II products), either via webpages, or following investment advice. Otherwise using data from benchmark index, reference, underlying assets or generic/benchmark product.	
Q6	In general, we support amendments to the narrative explanations, but as we do not support the proposal about including simulated past performance, we do not see a need for including text related to that. If simulated past performance is included in the PRIIPs KID it will be very important to high light to the clients that 1) this is simulated performance and what that means, and 2) the simulated past performance is not an	

	indication of future performance. The KID producers should also be allowed to include additional narrative to put the calculation in context and for the narrative not to be buried in "small print "either by highlighting it in bold or including it in a separate section "important context in the calculation of performance scenarios ". We also think that the proposed changes are an improvement. However, the section could be improved further with a graphical illustration like in 6.1.3. which would be much easier to interpret for a retail investor. And, if it was possible to indicate the time horizon for the input data used for performance scenarios.	
Q7	In our opinion a wider discussion on the overall methodology of the performance scenarios should not be included in a consultation on targeted amendments. Any new methodologies and their outcomes should be thoroughly tested and assessed before being considered. They must be consumer tested to ensure that the information provided is beneficial to retail investors and does have serious potential to mislead investors, as in the case of the current performance scenarios. A general issue with the proposal is that it sets the expected return to the same value for all assets which implies there is no risk premia to take risk. As such, in the performance scenarios you lose out on such information. As MiFID II and PRIIPs are closely linked MiFID II's rules should take in close consideration. Any simulated past performance should be in line MiFID II's delegated Regulation 2017/565 Article 44 which provides the framework for „fair, clear and not misleading information requirements" in a MiFID distribution context. E.g. Article 44 (6) litra a require „where information contains information on future performance, investment firms shall ensure that the follow conditions are satisfied: (a) the formation is not based on or refer to simulated past performance". In relation to using 10 years history we are in general for it, but it is not without cost. For underlying assets with less than 10 years history, you will need to rely on more	

	proxy-data for the missing years and as such, different manufacturer may use different proxies which could result in non-comparability between KID manufacturers. We believe that longer empirical data sets should be used. This should not be limited to 10 years as e.g. the 2008 financial crisis would then be out of the data set and could very well have a fixed start date instead of a rolling time window. Specifically related to category 2 PRIIPs: As many funds do not have 10+ years of data we believe that a more generalized approach should be used mapping funds to indices with the necessary amount of data. Specifically related to category 3 PRIIPs: It is very questionable whether performance scenarios should be delivered at all. The average hedge fund only lives 5 years. Value-at-risk / Expected shortfall typically only have short horizons as the risk profile changes frequently. We also see some practical issues in relation to using 10 instead of 5 years of history that must be addressed o How to handle PRIIPs with a limited period less than 10 years o If extended from 5 to 10 years, transitional rules will be needed, as the manufactures will not have the necessary data That being said, we think that using the risk-free rate of return is at least an improvement, because this reduces the problem of using misleading past performance. The model could be improved further by using standard risk premiums for different asset classes. These risk premiums could be updated by ESMA once a year to reflect the actual economic environment.	
Q8	In general, we think that a simple graphic illustration like the one in 6.1.3. will make it easier to understand for retail investors. We approve of only using two scenarios like the stressed and the favourable scenario, but only for products with symmetric return scenarios.	

The suggestion to only show “Stressed” and “Favourable” would however be misleading for many structured products. Many equity-linked structured products is built up by selling part of the “upside” of a market move and receive some partial protection for moderate scenarios (and also sometimes unfavourable scenarios).

To illustrate this behaviour, consider three products: (i) A bull certificate with Euro Stoxx 50 as underlying, (ii) a structured note with Euro Stoxx 50 as underlying and capital protection for a fall in Euro Stoxx 50 by up to 25% and (iii) a structured note with Euro Stoxx 50 as underlying and capital protection for a fall in Euro Stoxx 50 by up to 50%.

That would give the following results in the table below. It can be seen that the “Stress” and “Favourable” scenarios are all the same, and the differences is between the moderate and unfavourable. The illustration of differences in the moderate and unfavourable scenarios, which are the relevant differences between these products, would be lost if only stress and favourable scenarios are to be shown in the KID.

	Bull certificate	Structured note, 25% protection	Structured note, 50% protection
Stress	-21.18%	-21.18%	-21.18%
Unfavourable	-10.11%	-10.11%	0.00%
Moderate	-0.53%	0.00%	0.00%
Favourable	10.02%	10.02%	10.02%

Q9

Yes. In general, we approve of the proposed amendments. We support every amendment that will help improve the PRIIPs KID. But we find it important that it is clearly stressed that these amendments are not at all the only ones needed. As mentioned in our general comments we see a big need for other amendments as well. We think it is a problem, that the issues raised from the industry regarding the costs calculations is not addressed.

The change for auto callable is less desirable than what has been suggested by the

| | EUSIPA Technical Working Group on the application of Regulatory Technical Standards (RTS) under the EU PRIIPs Regulation. We prefer the suggestion of the EUSIPA Working Group and the ESAs seem to have missed some aspects highlighted by EUSIPA.

With respect to the RIY, yes, using same makes it more comparable, but why use “3%”? It no longer then shows the effect of the RIY from the particular product, and the effect of the “3%” is the same for all products, so why not put it at “0%” which would link the RIY to the cost amount. | |
| Q10 | We support the need for changes in the PRIIPs KID regulation to be able to include UCITS in the PRIIPs KID.

But we find it very important to object against the intention to keep the UCITS KIID for professional clients. We do not see a need for this document for professional clients – they need information on quite another level of granularity than they can acquire from the UCITS KIID or the PRIIPs KID. They do not require standard information, but information tailored to their requirements.

As UCITS by definition are born as a product to retail clients it has been natural to make UCITS KIID for all UCITS, but when PRIIPs KID are taking over on the retail part it will not be necessary to keep the UCITS KIID alive for professional clients. AIFs are born as professional products and the regulators have not found it necessary to introduce an AIF KIID for professional clients buying AIFs even though they in general are more complex than UCITS.

Furthermore, MiFID II works on the assumption, that product manufacturers or distributors are entitled to assume, that professional clients have the required knowledge and experience to understand the risks attached to a particular product. This is also the reason why the PRIIPs regulation was tailored for retail investors only and without the requirement to produce PRIIPs KID for products only offered to professional investors. | |

| | If professional clients shall have such a document – which we do not see a need for – then we suggest using the PRIIPs KID going forward to avoid an obligation for the fund companies to have to different setup to produce both UCITS KIIDs and PRIIPs KIDs. The production of the UCITS KIID to professional investors will just raise costs without solving any investor protection issues. In the end all costs are invoiced indirectly to the investors.

The ESAs are considering incorporating over 15 of total of 39 articles of the UCITS KIID regulation into the PRIIPs regulation. To us this shows that switching from the UCITS KIID to the PRIIPs KID is no trivial matter and should not be taken lightly.

Finally, we also in this context would like to stress that an analysis must be performed before including other types of PRIIPs into the scope for the requirements moved from the UCITS KIID regulation to the PRIIPs regulation. The setup in the UCITS KIID regulation is developed with the purpose of giving information about UCITS. It can probably be relevant for similar product types, but for other types of PRIIPs it might not be relevant and in the worst case it might be misleading. | |
| Q11 | The production of the PRIIPs KID require the manufacturer to buy expensive market data and all changes require very expensive changes to the complex algorithms behind the PRIIPs KID. We think that the proposed changes should await more in dept analyses to save the industry from having to make changes in several steps.

Furthermore, we think that the UCITS exemption for the PRIIPs KID should be extended by at least a year to have enough time to draft the appropriate changes and spare the industry from an additional set of changes and avoid sunk costs. A switch from UCITS KIID to the PRIIPs KID will carry substantial costs for the fund industry, therefore a switch shall not be rushed and should not happen until further analyses is carried out. There is no need to rush the switch as both investors and the industry think the UCITS KIID is a better way of securing investor protection than the current PRIIPs KID. | |

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Q12	With a consultation period of four weeks it has not been possible to provide specific information on the cost of including information on past performance for different types of PRIIPs. However, we would like to comment that the additional costs for including information on past performance for UCITS will be minimal as long as the calculations are based on the methods used today in the UCITS KIID. But if simulated past performance is to be included it will add costs both to develop a model for simulating the past performance, to buy data both initial and ongoing, and to maintain the model and make the simulations on an ongoing basis.	
Q13	To avoid additional costs for the industry, we think that the proposed changes for the UCITS funds should await an ordinary review of the PRIIPs regulation. Due to this we propose, that the PRIIPs exemption for UCITS should be extended by at least a year and preferably two years. This should not be problem as both investors and the industry think the UCITS KIID is a better way of securing investor protection than the current PRIIPS KID.	