

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:	The Norwegian Consumer Council (Forbrukerradet)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
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Reference	Comment	
General Comments	<p>General Comments from the Norwegian Consumer Council:</p> <p>It must be an overall goal to ensure that investment firms provide their customers with relevant information in an understandable and standardised form about the financial product, including clear and appropriate guidance and risk warnings associated with the investment. It is also important that the total cost (price) the retail financial consumer can expect to pay must be very clearly stated in the Key Information Document (KID).</p> <p>The aim of the PRIIPs KID is to ensure that retail financial consumers receive adequate and necessary information. Consumers need to be able to use the Key Information Document in order</p>	

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to make informed investment decisions; both to understand the specific investment product and to compare various investments. The regulation involves imposing important requirements for investment product manufacturers to prepare a mandatory KID in a standardised format.

Any KID must explain, in clear and simple language:

- what the investment product is
- the total costs of the investment product
- the historical performance of the investment product
- the risks and potential rewards of the investment product

A key element of the KID, one that is in the outer edge of the scope of this consultation, should be to disclose all fees and costs associated with the product in a way that is both clear and understandable for consumers. The total cost (price) the customer can expect to pay must appear very clearly. The KID should include calculations on all annual costs (including fees and kickbacks), and what the aggregated costs will be in 5 or 10 years from now. Such information should be disclosed in percentages as well as in monetary value for a standardized amount; possible such default amount limits may be € 10,000, € 25,000 or € 100.000.

The Norwegian Consumer Council would like to point out that it is unfortunate that the urgency of implementing the changes as well as the limited time frame of this process has made it virtually impossible to conduct a thorough consumer testing study, which could have provided valuable insight from retail financial consumers on how the information in the KID should be presented. A possible way forward is to allow for changes to be made at a later stage, both to the document layout itself and on how information is presented, after an evaluation period.

The Norwegian Consumer Council support most of the proposals that are submitted in the joint consultation paper from the ESAs on improvements, with some exceptions and clarifications. We have provided answers to Q1-Q9.

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<p>Q1</p>	<p>Question 1: Do you agree that information on past performance should be included in the KID where it is available?</p> <p>Answer 1: Yes. The Norwegian Consumer Council support inclusion of past performance information alongside future performance scenarios. However, the most important aspect regarding historical performance of investment products is to ensure that such performance are measured against the correct benchmark. It sometimes seems that picking relevant benchmarks are more art than science. As an example many bond funds use risk free government bond indexes as benchmarks while primarily investing in corporate bonds. A risk free benchmark is thus not particularly relevant, but there may also be a lack of benchmarks in smaller markets. We believe that such discrepancies needs to be disclosed in plain language in the KID.</p> <p>Also, in our opinion, it would be preferable to measure performance over a period of 10 years. A lengthening of the historical period used would provide a more accurate picture of the performance of investment products, at least for products that have been around for so long. As described in the consultation paper, such an extension could contribute somewhat in lowering expectations for future returns.</p> <p>For funds with a shorter past than 10 years we would suggest that such funds are measured from the starting date, but that the benchmark is measured from a 10-year period where the index equals 100 at the starting date of the investment product.</p>	
<p>Q2</p>	<p>Q2: Are there challenges to include past performance information for certain types of PRIIPs?</p> <p>A2: The more an investment product mixes asset classes the more difficult it becomes to construct proper benchmarks. A 50/50 equity/bonds product will often have a mandate to vary its investments between 40 and 60 percent of each asset class, but the index will be fixed at 50/50. It is thus easy for such funds to beat the index by tilting its investments towards equity, but that may not give the retail financial consumer the risk profile he or she wants, and may come as a surprise to the consumer in times with a high degree of turbulence in the markets.</p>	

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	<p>It is even more difficult to compare historical performance for bundled insurance products. Perhaps one way to solve this would be to debundle the historical performance into the underlying investments and the insurance coverage. As a general rule we suspect that the bundle is an efficient way to conceal the true cost of the products.</p> <p>Over the long term most actively managed funds do not manage to beat their benchmarks after expenses. Most funds which survives for 10 years will tend to have done well in its early years. Funds that underperform tend to be shut down. There is thus a survival bias in the current fund population, but there is a high likelihood that overperformance can be attributed more to luck than to skill. A typical retail investor will not be aware of this mechanism and will be susceptible to be swayed by the historical performance. This challenge is general for all types of PRIIPS.</p>	
Q3	<p>Q3: Do you agree that it is appropriate for this information on past performance to be based on the approach currently used in the KII? If not, please explain your reasons and if an alternative presentation would be more appropriate and for which types of PRIIPs?</p> <p>A3: See comments above (answers to Q1 and Q2).</p>	
Q4	<p>Q4: Do you think that information on simulated past performance should be included in the KID where actual past performance is not available? If not, please explain your reasons.</p> <p>A4: In cases where past performance is not available, most likely because of a short lifespan of the product, it is unclear what a simulated past performance would contribute in terms of providing valuable insight to consumers. In our view, such simulations could risk ending up as mere theoretical exercises without providing substantive content to consumers.</p> <p>Simulated past performance could potentially mislead many customers. Such calculations were used in the context of structured products, causing consumer detriment. In reality, it could be compared to painting the target after firing off a shot.</p>	

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	<p>There may be a tendency for investment providers to launch “flavour of the year products” in assets that has done well over a certain period. Unfortunately, retail investors have a tendency of buying high and selling low, thus depleting their return compared to the benchmarks. Past performance can thus be a treacherous selling point since there is a tendency of mean reversion. In retrospect we might say that the bitcoin craze is one such example. A number of offerings were created at the pinnacle of the bitcoin bubble and the main selling point was past performance.</p>	
Q5	<p>Q5: If you think that information on simulated past performance should be included in the KID, what approach do you think should be used to simulate the past performance, and how should this be presented in the KID?</p> <p>A5: See our Answer (A4) to Q4.</p>	
Q6	<p>Q6: Do you consider these amendments to the narrative explanations to be an improvement on the current performance scenario approach?</p> <p>A6: Yes. The Norwegian Consumer Council support the proposals from the ESAs: A more prominent statement that the scenarios are based on simulations, an explanation on the key messages that are more visible and to-the-point, as well as some other amendments, may be an improvement on the current performance scenario approach.</p>	
Q7	<p>Q7: Do you have any comments on the analysis set out in this Section of other possible options to improve the future performance scenarios?</p> <p>A7: It is important to inform retail financial consumers in a clear and understandable way that future market developments cannot be accurately predicted. While past performance is factual, estimates on future performance will necessarily be speculative.</p> <p>The goal must be to ensure that consumers through the KID get a tool that does not exaggerate</p>	

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possible positive scenarios. It is more important to highlight possible risks associated with investment product. As such, the Norwegian Consumer Council will support the idea of including the four scenarios that are proposed in the consultation. However, it must be clarified that actual future performance could be lower than what is described in both the unfavourable scenario and in the stress scenario. Also, when presented with a moderate scenario, investors need to be clearly informed that this scenario not necessarily represent the most probable outcome.

As a general rule we have found that consumers to a large extent neglect to notice negative disclosures. Most of the bad news is buried in plain sight in a myriad of complex finance lingo. It is thus important to highlight the obligatory caveats in for example bold and slightly larger font sizes and place them at the relevant places in the document, instead of hiding them in fine print at the bottom.

It is also important to focus on avoiding information overload.

Q8

Q8: Do you have any views on how the presentation of the performance scenarios could otherwise be improved?

A8: What consumers will actually get back will not only depend on how the investment product performs in the future, but also on the costs associated with the product.

In regard to visual presentation of performance scenarios, the Norwegian Consumer Council would guess that graphical presentations (as outlined on page 39 in the consultation) may tend to illustrate the range of possible outcomes in a more easy-to-understand manner, compared with tables (as outlined on page 38 in the consultation). However, it is important to ensure that the scales that are used for graphs are clear, fair, and not misleading.

It should also be considered to use both graphs and tables in order to illustrate possible future outcomes.

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	<p>Consumer testing would probably bring valuable insight into how performance scenarios should be presented in the KID. Such consumer testing should be carried out as soon as the new regulation is implemented, in order to lay the foundation for possible adjustments to the KID in the future.</p>	
<p>Q9</p>	<p>Q9: Do you agree with the proposals described in this section?</p> <p>A9:</p> <p>Regarding 4.2.2 on Products with an autocallable feature: The Norwegian Consumer Council support setting up specifications to the performance scenario tables and accompanying narratives, so as to facilitate the understanding of this product feature by the retail investor, and to ensure consistent approaches by PRIIP manufacturers.</p> <p>Regarding 4.2.3 on Narratives for the Summary Risk Indicator: The ESAs propose to extend the length of the explanatory text, where the SRI is considered to not adequately capture material risks, from 200 characters to 300 characters. The Norwegian Consumer Council support this proposal.</p> <p>Regarding 4.2.4 on Narrative for performance fees – composition of costs table: If performance-related fees are linked to the investment product, an annual average of total costs for the last five years should be the norm. If the fund has a shorter history, the available years should be used if the fund has at least one calendar year history. If the fund is new, an estimate based on normal fluctuations in the market should be prepared by a neutral third-party manager.</p>	
<p>Q10</p>	<p>Q10: Do you have any comments on the proposed approaches in relation to the analysis and proposals in this section?</p> <p>A10: No comments.</p>	

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Q11	Q11: Do you have any comments on the preliminary assessment of costs of benefits? A11: No comments.	
Q12	Q12: Are you able to provide information on the costs of including information on past performance for different types of PRIIPs? A12: No comments.	
Q13	Q13: Are there significant benefits or costs you are aware of that have not been addressed? A13: No comments.	