EACB answer on CESR's technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS

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The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

For further details, please visit www.eurocoopbanks.coop

General remarks

1. The European Association of Co-operative Banks (EACB) would like to thank the Committee of European Securities Regulators (CESR) for the opportunity to comment on its technical advice addressed to the European Commission at level 2 on the format and content of Key Information Document disclosures for UCITS.

2. European co-operative banks are overall supportive for the concept of Key Information Document disclosures for UCITS and are sure that they will provide investors with understandable information and enable them to compare the products in a better way than they could with the current Simplified Prospectus.

3. In spite of the overall support EACB is very critical with respect to some technical details outlined in the proposed advice of CESR to the Commission especially concerning the risk and reward disclosures as well as the charges disclosures.

4. In the following outlines the EACB would like to point out comments on single parts of the consultation paper and to answer to selected questions raised by CESR:

Form and presentation of Key Investor Information

Section 1: Title of document, order of contents and headings

5. Box 1: A disclaimer is missing stating that the producer is not liable for the completeness of the information. This is necessary because the short information cannot be as complete as the prospectus.

6. Box 1, 4: We would like to suggest that the delegation of the management shall be included here.

7. Box 1, 9: The term "practical information" is preferable as compared to "additional information".

8. Box 1, 12: We are of the opinion that the ISIN – if available – has to be included in an obligatory manner.

Section 2: Appearance, use of plain language and document length

9. Box 2: For the sake of clarification, columns and the use of specific corporate designs should be allowed. With respect to the maximum length of the document EACB opts for a flexible approach.

Section 3: Publication with other documents

10. Box 3: We agree with the proposals made by CESR.

Content of Key Investor Information

Section 4: Objectives and Investment Policy

11. Box 4, 1a: It should be allowed to describe the objectives and the policy of the UCITS in bullet points.

12. Box 4, 1d: The minimum holding period bears the risk of misleading information if investors consider this obligatory. We would recommend the following statement:

[Recommendation: This fund is appropriate for investors with an investment horizon of [X] years]

13. Box 4, 1d: Also the launching date should be stated.

Section 5: Risk and reward disclosure

14. Box 5A, 5B: Historical risk measures are subject to significant fluctuations over time. As an example the annualized volatility (based on weekly data over a rolling 3-year horizon) varies between app. 10% and 25% for the MSCI Europe net dividend reinvested between January 2001 and July 2009. The respective figures for the MSCI EM Europe net dividend reinvested even vary between 22% and 45%. Bond indices show comparable behaviour - albeit on a lower level.

15. The consequences are massive fluctuations in the risk classification based on SRRI over time and besides this classification is typically significantly delayed versus the current and actual market risk at the time of assessment. Thus we would recommend either increasing the time horizon for the volatility calculation to a 5 to 10 year horizon or applying an ex-ante risk measure - based on a much shorter data history (comparable to the one year horizon in the UCITS Derivative Directive).

16. Massive fluctuations in the SRRI and thus the risk assessment may be interpreted by the investor/client as unfair and unclear. If the (non-professional) client trusted in the risk assessment when investing this may give rise to claims for compensation/damages.

17. In general we are of the opinion that the risk and reward indicator – as outlined in option B – leads to a simplification of a client's investment decision that is not appropriate taking the complexity of – for instance – the comparison of different funds into consideration.

18. We are therefore in favour of a pure narrative approach on risk and reward disclosures. It is understandable that clients – as the outcomes of the consumer testing exercises show – would prefer a very simple, traffic light style label for UCITS funds. However the reality of making investment decisions is much more complex and depends on many factors. One-dimensional risk categorizations – as the current financial crisis shows – tend to fail.

19. We furthermore see the envisaged rigid framework for risk categories very critical. European co-operative banks have tested and used risk categories since the implementation of the MiFID. The categories vary between the single banks in their co-operative network depending on their respective structure as well as their customer base and do not only cover UCITS products but value each and any of the financial instruments which are distributed by the bank. For this reason the strict imposition of 6 classes will probably not be feasible.

Section 6: Charges disclosure

20. Box 6: Unlike CESR we do not think that a methodical inclusion of portfolio transaction costs for later points in time is possible. Those costs cannot be calculated

beforehand since they depend on the developments in the capital markets – leading to possible strategic re-investments – and on the costs for security transactions.

Disclosures for charges in cash terms

21. Box 7: We strongly disagree with these proposals. The mathematical statement made in this section is not clear at all. Annex 3 in the consultation paper (page 89) does not provide further mathematical clarifications.

22. What we miss are more precise outlines on the following matters:

    - When exactly should the "combined effect" be calculated?
    - Depending on the timeframe for a comparison it needs to be a discounted comparison calculation.
    - A comparison – especially with other fund products – does only make sense on the basis of the rate of return and not on the basis of the absolute amount.

23. We would like to highlight the following example: When assuming costs of 2% p.a. and a net performance of 7% p.a. over a period of 20 years this would lead to total costs of € 700. Investors will view this as a cost ratio of 70% while in fact the increase of the invested capital reduces this cost ratio to 40%.

24. For the outlined reasons we consider the statements in Box 7 as not practicable and should be either overhauled or deleted. In addition we have strong reservations with respect of providing the client with rough estimations in a written form. Those depend on numerous assumptions, need ample explanations and are therefore not usable in practice.

Circumstances in which ex-post figures might be inapplicable

25. Box 9: EACB can imagine such a material change only when it is caused actively by the management company. Then, such a variation of 5% makes sense.

26. However we would like to criticize the proposal with respect to the reflection of passively triggered variations for which the 5% limit is by far too low. Therefore we consider as crucial to determine the content of Box 9 much clearer including the possibility to have material changes both actively as well as passively induced.

Section 7: Past performance presentation

27. Box 13: From our point of view 25 business days after 31 December are clearly too short. Such a requirement is not feasible in practice. Size, structure and resources of the management company should be taken into account. The principle of proportionality has to be applied here.

28. A further concern of European co-operative banks is that supervisors might interpret this proposal in different manners with the danger of supervisory arbitrage.

29. Box 16: We would like to ask for more clarification regarding the procedures in case of merging two funds to a new one.

Section 8: Practical Information

30. Box 17: We would appreciate some more clarification on the inclusion of cut-off-times.

Special cases – how the KID might be adapted for particular fund structures

Section 12: Fund of funds

31. Box 22: We would like to ask for some more clarification regarding the inclusion of performance fees of sub-funds.

Section 14: Structured funds, capital protected funds and other comparable UCITS

32. Box 24A/B: We would prefer option A.

Other issues

Section 15: Medium and timing of delivery, including use of a durable medium

33. Box 25: We would appreciate a clear statement that any changes and amendments can be made on the website of the management company.

34. Box 25, 2c: The requirement to notify the address of the website to the client should not be bound to a specific form.

Section 16: Other possible level 3 work

35. We would like to ask for clear transition periods so that the management companies can prepare themselves to the regulatory changes. These transition periods shall by no means be shortened due to any action of the management company.

Contact:

The EACB trusts that its comments will be taken into account. For further information or questions on this paper, please contact:

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