

TAIEX Conference

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Implementing the Key Information Document

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Information

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Contents

1. Issuing and reviewing the KII
2. KII distribution regime
3. KII and market information

1. Issuing and reviewing the KII

Issuing and reviewing the KII (1)

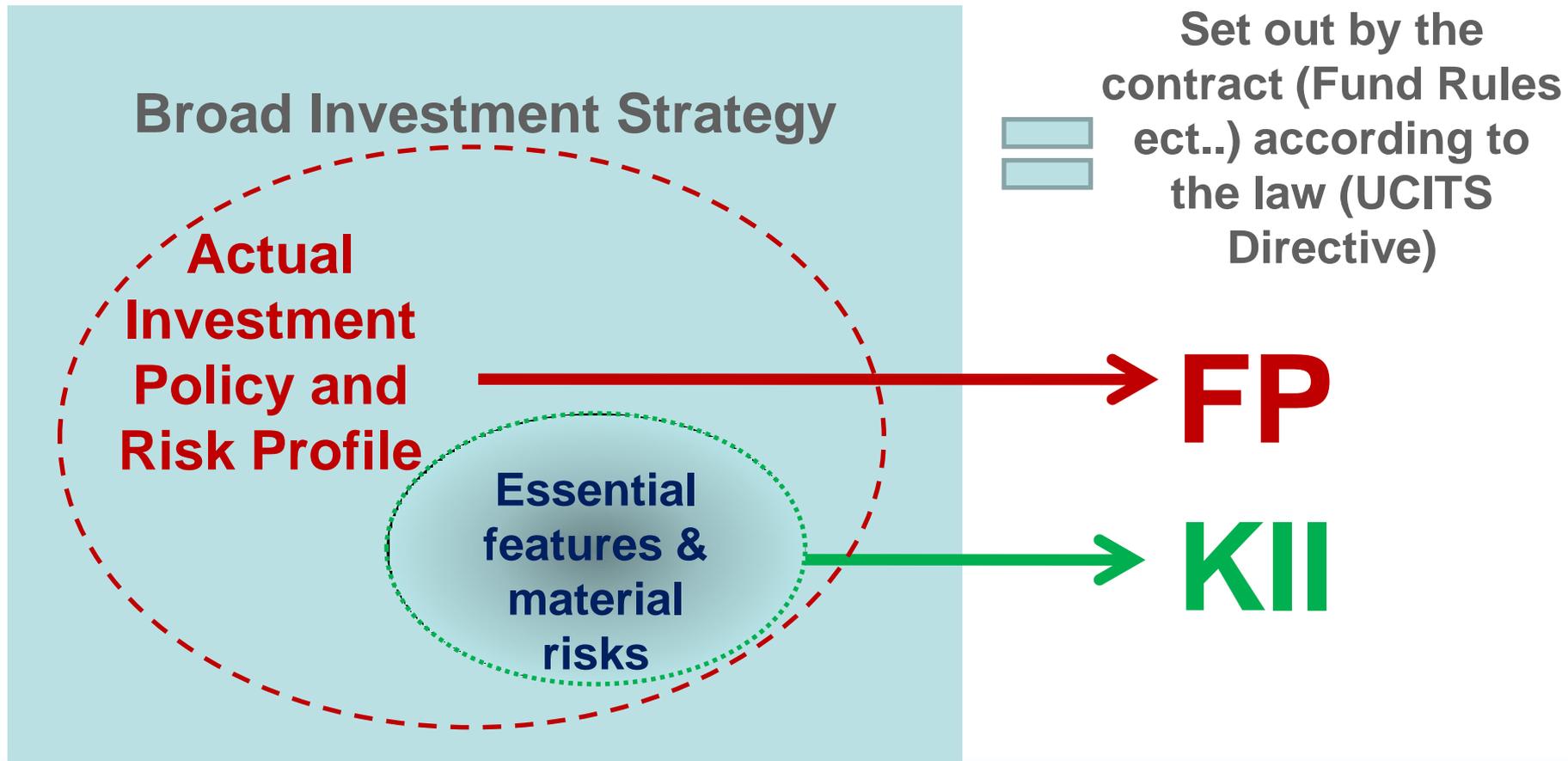
Article 79 of UCITS IV Directive

*“1. Key investor information shall constitute **pre-contractual information**. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.*

- the KII is pre-contractual information, it is not part of the contract;
- contractual rules are set out in the Fund’s Rules or Instruments of Incorporation (that are annexed to the Full Prospectus - FP);
- the KII must be consistent with the FP, but has different objectives with respect to the FP and the Fund Rules ect...
- the KII illustrates the **essential actual** characteristics of the UCITS (principle of “materiality”), not how the fund can invest, or its risks can be, in general;
- the KII is a living document, it requires update on a regular basis.

Issuing and reviewing the KII (2)

...in terms of information on the investment policy and risks of the UCITS, this means that...



Issuing and reviewing the KII (3)

➤ As the KII focuses on essential information, it cannot cover in detail all characteristics and aspects of the UCITS that may be relevant for investors

...this is a major difference between the KII and the FP

Article 69 of UCITS IV Directive - FP

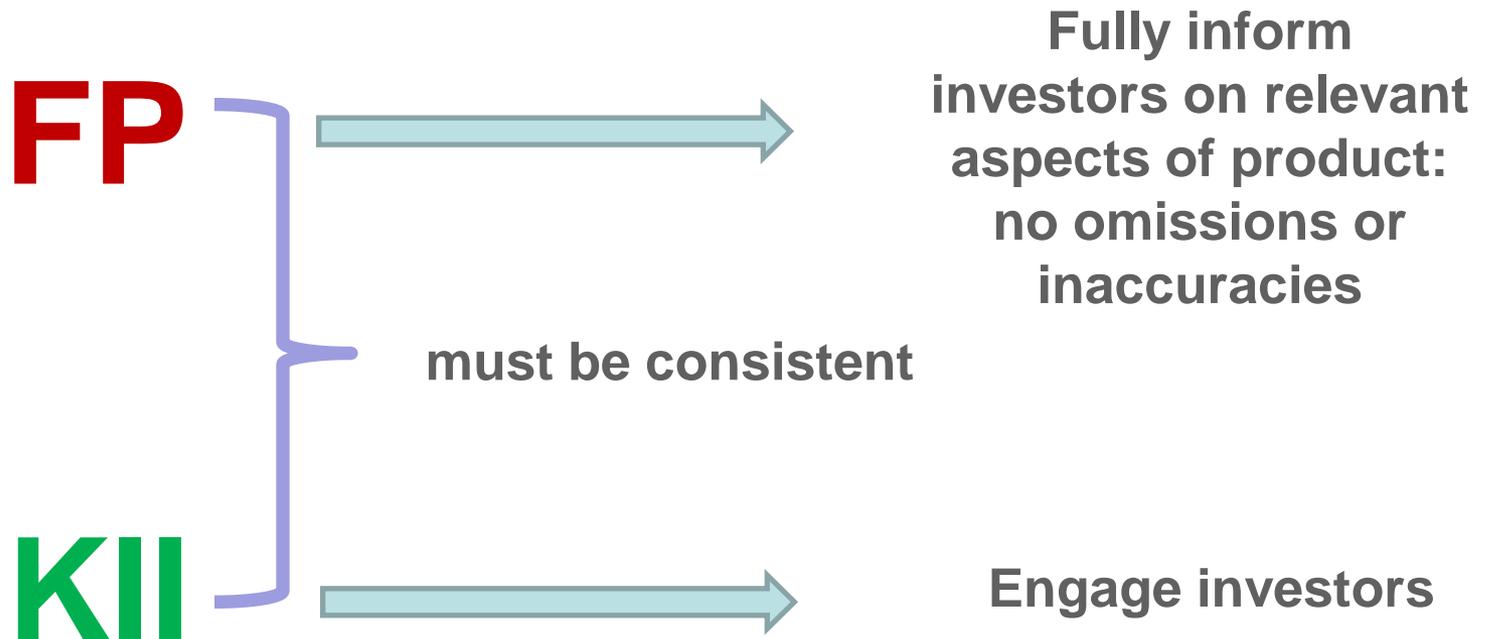
*“1. The prospectus shall include the **information necessary for investors to be able to make an informed judgement** of the investment proposed to them, and, in particular, of the risks attached thereto.”*

Article 78 of UCITS IV Directive - FP

*“Key investor information shall include appropriate information about the **essential characteristics** of the UCITS concerned, which is to be provided to investors so that they are **reasonably able to understand** the nature and the risks of the investment product.....”*

Issuing and reviewing the KII (4)

... in terms of the purposes of the documents, this difference means..



Issuing and reviewing the KII (5)

...and in terms of liability, this difference implies...

Article 79 (2) of UCITS IV Directive

*“Member States shall ensure that a person **does not incur civil liability solely on the basis of the key investor information**, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning in this respect”..*

(as for the “summary” – see Prospectus Directive 2003/71/EC, and Directive 2010/73/EU)



Therefore, legalistic concerns are inappropriate! Use plain language and refer to actual elements that are material to an investment in the UCITS:

AVOID LEGALISTIC APPROACH

Issuing and reviewing the KII (6)

➤ The KII should capture the main features of the investment policy of the UCITS, and on its material risks and actual costs, as a consequence:

- issuing, monitoring and reviewing the KII should be carried out as a specific process requiring contributions from different functions (typically internal controls, investment management, accounting, strategy/marketing);
- the management company (ManCo) is free to decide who should lead/coordinate these tasks, but the compliance function should have at least oversight of the process, as the compliance function shall:

“...advise and assist the relevant persons responsible for carrying out services and activities to comply with the management company’s obligations under Directive 2009/65/EC.” (Article 10 of EC implementing Directive no. 2010/43/EU on ManCos’ “passport” and organization)

Issuing and reviewing the KII (7)

▪ the risk management function must also be consulted in the issuing, monitoring and reviewing of the KII, as the indication of the SRRI and the narrative explanation of the risks relevant to the UCITS must be:

- ✓ “adequately documented” (Art. 8(3) of the KII Reg.)
- ✓ “*consistent with the internal process for identifying, measuring and monitoring risk adopted by the UCITS’ management company as laid down in Directive 2010/43/EU. Where a management company manages more than one UCITS, the risks shall be identified and explained in a consistent fashion.*” (Art. 9 of the KII Reg.)

...in addition, remember that the risk management function shall

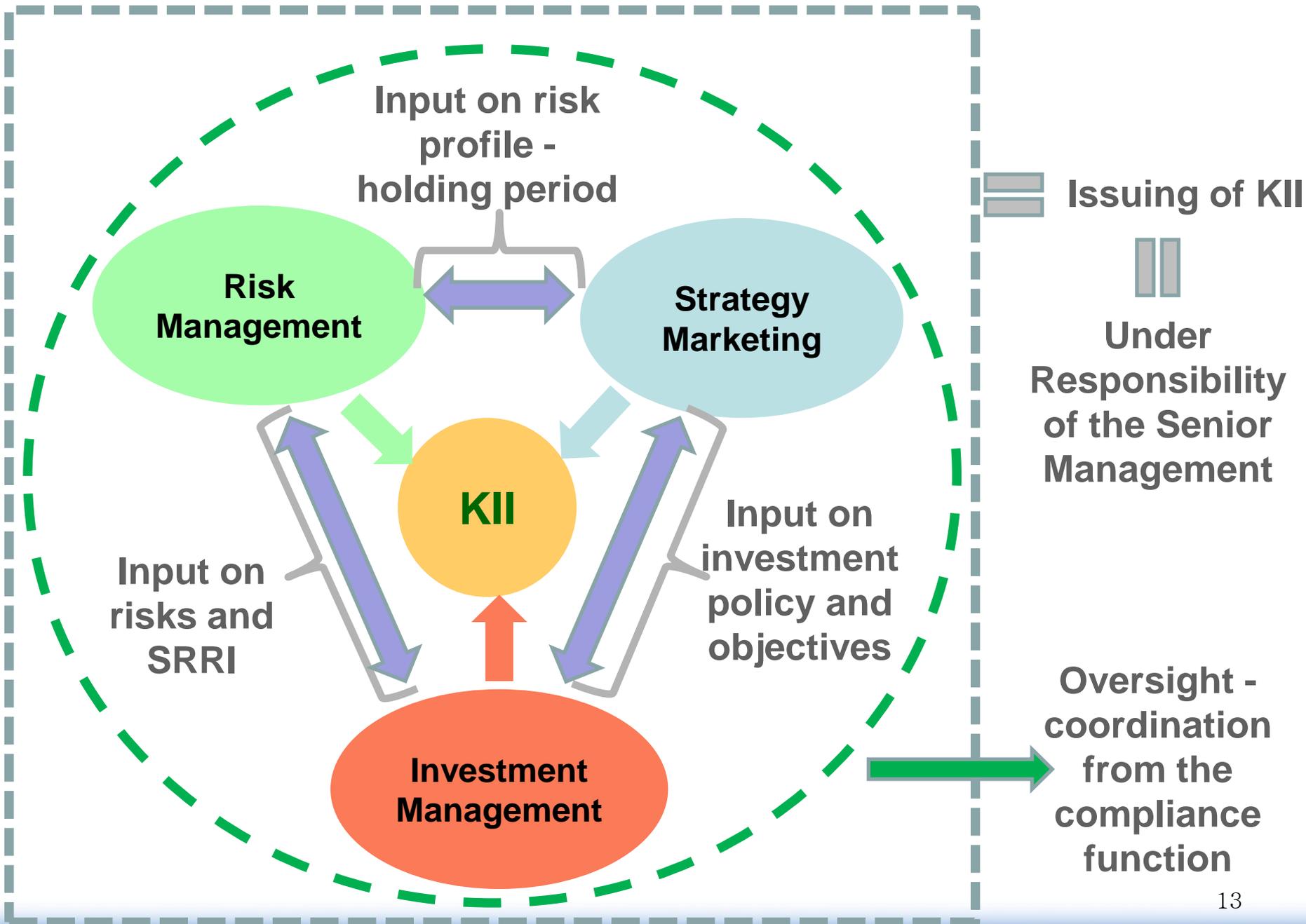
“*..provide advice to the board of directors as regards the identification of the risk profile of each managed UCITS*” (Art. 12(3)(c) of EC Directive 2010/43/EU)

Issuing and reviewing the KII (8)

- corporate arrangements (according to national law) will determine who is accountable for the (different parts of the) process
- however, the final responsibility for the issuing, monitoring and review of the KII shall rest with the senior management of the ManCo, according to the general rule:

“Member States shall require management companies, when allocating functions internally, to ensure that senior management and, where appropriate, the supervisory function, are responsible for the management company’s compliance with its obligations under Directive 2009/65/.”

(Article 9 of EC Directive 2010/43/EU).



Issuing and reviewing the KII (9)

Article 82 of UCITS IV Directive

“The essential elements of key investor information shall be kept up to date.”

Article 22 (3) of KII Regulation

*“3. A review shall be carried out **prior** to or **following** any changes regarded as **material** to the information contained in the key investor information document.”*

➤ This means that the KII should be subject to a form of ongoing/periodic monitoring, aiming at verifying whether the information is consistent with the actual risk/reward profile of the UCITS, which may be (partly) changing over time.

➤ As already mentioned, the KII should be intended as living document.

Issuing and reviewing the KII (10)

- The reviews of the KII that shall be carried out **before** the concerned changes come into effect regard typically modifications/amendments of:
 - investment policy or management techniques of the UCITS
 - costs structure (charges/fess) of the fund**decided** by the ManCo.

“Where a change to the key investor information document was the expected result of a decision by the management company, including changes to the prospectus, fund rules or the instrument of incorporation of the investment company, the revised version of the key investor information document shall be made available before the change comes into effect.”

(Article 23 (2) of KII Regulation).

Issuing and reviewing the KII (11)

Article 24 (3) of KII Regulation – material changes to the charging structure

“2. Where the ‘ongoing charges’ calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for ‘ongoing charges’ that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UCITS in future.”

- CESR’s Guidelines have clarified that, where ongoing charges figures calculated on a ex-post basis become unsuitable because of a material change (e.g. an increase in management fees), an estimate may be used instead until reliable ex-post figures become available.

- In any case, the ManCo shall, no later than 12 months after the date of the change (or of the launch of the new UCITS), review the accuracy of the estimate by calculating a figure on an ex-post basis.

Issuing and reviewing the KII (12)

- The reviews of the KII that are to be carried out **as soon as possible after** the concerned changes have manifested their effects typically regard:
 - unintended modifications (driven by market factors) of the SRRI or of the material risks of the fund
 - amendments to the (ongoing) costs of the fund (see previous slide)
 - update of performance scenarios for structured funds (in case of path dependency ect..)
 - unforeseen changes to the underlying funds (fofs) or to master funds (feeder) or other details reported in the practical information section
 - any other correction of previous mistakes or omissions ...

Issuing and reviewing the KII (12)

- As regards the revision of the risk profile of the UCITS in the KII, CESR's Guidelines have clarified that:
 - any material change to the risk and reward profile of the fund shall trigger a prompt revision of the KII;
 - the SRRI shall be revised if volatility has fallen outside the bucket corresponding to its previous risk category during the preceding 4 months;
 - if the volatility of the fund has moved over more than one bucket during the preceding 4-month period, the UCITS shall be attributed the new risk class corresponding to the bucket which its relevant volatility has matched for the majority of this period;
 - the SRRI shall always be revised when changes to the risk and reward section of the KII are the result of a decision by the management company regarding the investment policy or strategy of the fund.

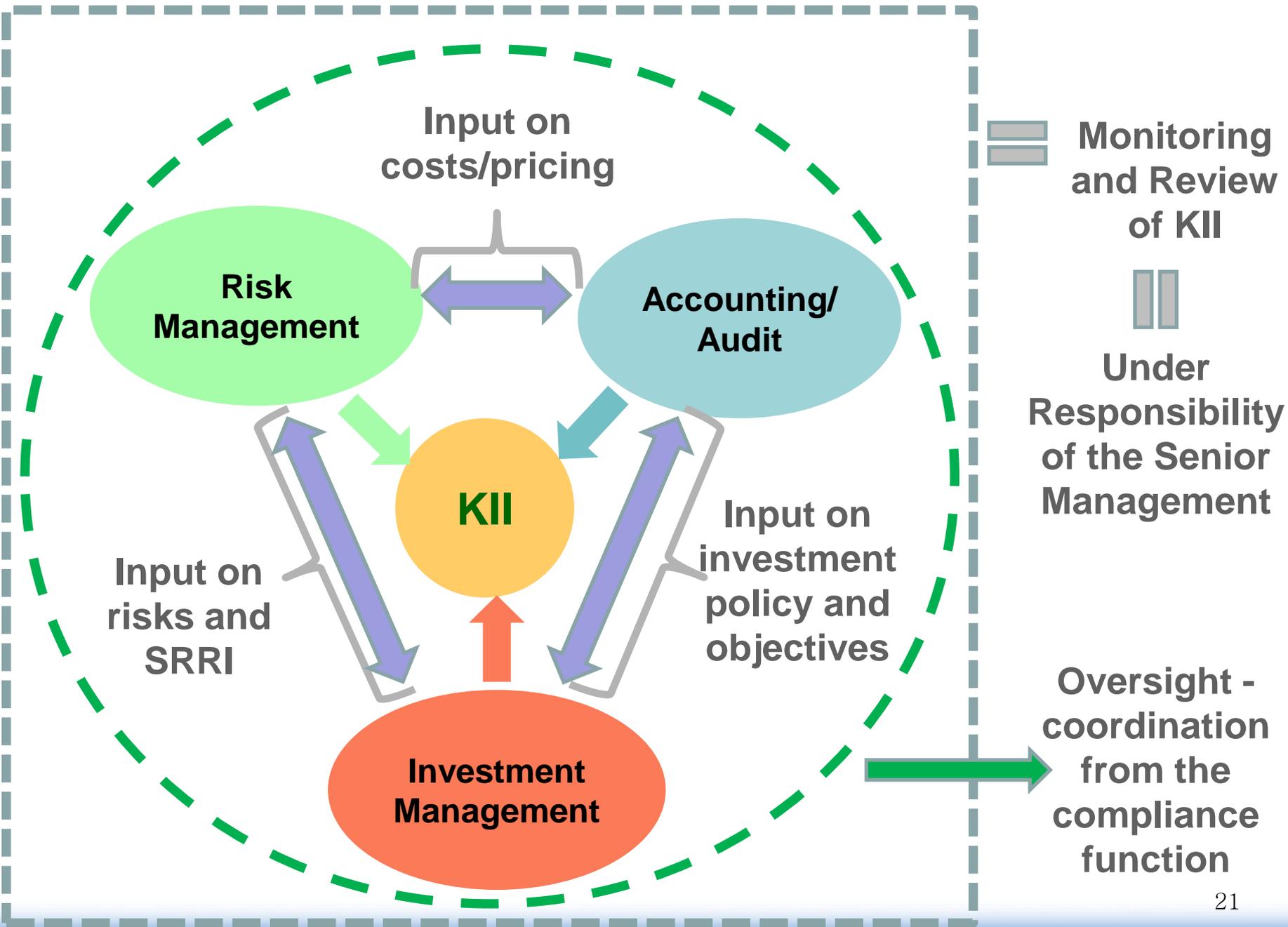
Issuing and reviewing the KII (13)

- Performance scenarios of structured funds shall be updated:
 - if market conditions have changed significantly since the launch;
 - at least on a yearly basis (if subscriptions/purchases of the units are still opened/possible), see following slide;
 - to reflect the time-dependency of a payoff, if any and relevant (e.g. where an anniversary date has passed).

Issuing and reviewing the KII (14)

- Ongoing revision derives from *ex-ante* decisions of the ManCo or from *ex-post* circumstances that bring material changes to the information presented in the KII
- However, in all cases, the KII should be subject to periodic review at least every 12 months (Article 22(1) of the KII Regulation)
- This periodic revision will in general take place at the beginning of the (calendar) year, along with the update of the past performance of the UCITS as required by Article 23 (3) of the KII Regulation):

“3. A key investor information document with duly revised presentation of past performance of the UCITS shall be made available no later than 35 business days after 31 December each year.”



2. KII distribution regime

KII distribution regime (1)

Article 80 (1) of the UCITS Directive:

*“... an investment company and.... a management company, which sells UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility (agent) **provides investors with key investor information on such UCITS in good time before their proposed subscription of units in such UCITS.**”*

- the KII should be delivered to investors “in good time” before the ManCo, or its agent or other intermediary (see following slide) acting on behalf or on account of the ManCo collects the order to purchase/subscribe the units/shares of the UCITS;
- the ManCo (or the intermediary selling shares/units of the UCITS) shall be able to demonstrate that investors received the KII (record keeping);
- **the KII shall be provided to investors free of charge**

KII distribution regime (2)

Article 80 (2) of the UCITS Directive:

“...an investment company and... a management company... provides key investor information to product manufacturers and intermediaries selling or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS upon their request.”

Member States shall require that the intermediaries selling or advising investors on potential investments in UCITS, provide key investor information to their clients or potential clients.”

➤ These intermediaries are securities firms (brokers/dealers) or banks that provide investment services/activities to the public according to the MiFID Directive (2004/39/EC).

KII distribution regime (3)

➤ The MiFID-UCITS link in Article 34 of Directive 2006/73/EC (MiFID level II) ensures that intermediaries have sufficient incentives to distribute and use the KII when approaching clients/investors.

- In fact, Article 19(3) of the MiFID Directive requires that:

“3. Appropriate information shall be provided in a comprehensible form to clients or potential clients about:

....

— *financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,*

...

— *costs and associated charges*

This information is considered as provided if a SP (now KII) is delivered

KII distribution regime (4)

Article 81 (1) of the UCITS Directive allows

*“... investment companies and... management companies, to provide key investor information in a durable medium or by means of a **website**.”*

- This may alleviate the costs of the distribution of the UCITS, specifically when it takes place in remote or on a cross-border basis.
- However, it also raises concerns for investors protection, as the contact with the investor is lost, and this shall fetch the document on the website.
- The KII Regulation (Article 38) has then clarified that:
 - a) use of that medium must be appropriate to the business context between the ManCo and investors;
 - b) the investor must consent to the provision of information in that form;
 - c) the investor must be notified electronically of the address of the website.

KII distribution regime (5)

- In case of cross-border marketing of the UCITS the KII is the only document that is mandatorily subject to translation in the language of the Member State receiving the offering (Host)
- The KII is not formally approved by the Competent Authority of the UCITS, but only sent, along with its subsequent revisions, to this Authority for *ex-post* supervision
- If the UCITS is marketed cross-border, the KII is also filed, and its subsequent amendments kept available, to the Competent Authority of the Host Member State

3. KII and market information

KII and market information(1)

➤ Article 5 of the Commission implementing Directive no. 2010/65/EC requires that, in case of mergers of funds:

“1. .. an up-to-date version of the key investor information of the receiving UCITS shall be provided to existing unit-holders of the merging UCITS.

2. The key investor information of the receiving UCITS shall be provided to existing unit-holders of the receiving UCITS where it has been amended ..”

➤ Article 6 integrates the previous requirements taking the side of the new investors that purchase new shares/units pending the merger of the funds:

“Between the date when the information ... is provided to unit-holders and the date when the merger takes effect, the information document and the up-to-date key investor information of the receiving UCITS shall be provided to each person who purchases or subscribes units in either the merging or the receiving UCITS...

KII and market information (2)

- The case of UCITS that allow subscriptions from the public only during a predetermined period during their initial launch (typically structured, protected or formula funds) raises issues in terms of the obligation to review the KII.
- The KII is in fact a pre-contractual document, and, as such, should “live” only as long as the offering of the UCITS.
- The situation is indeed different when UCITS are listed on regulated markets or other MiFID trading venues (ETFs), as in these circumstances a prospectus should always be available to the public (although UCITS funds are out of the scope of the Prospectus Directive).

KII and market information(3)

- The Directive is partly silent on this point and Member States may use, as some already did with the SP, the KII as also an instrument of market information, requiring the publication and update of the KII also when the UCITS cannot be anymore subscribed.
- In this regard, the UCITS Directive requires that:
an up-to-date version of the key investor information shall be made available on the website of the ... management company.”
- The rules of conduct regarding the direct sale (different from marketing) of the UCITS to investors from ManCos, and on the relationship with unit-holders (including ongoing information), are still not perfectly harmonized.
- The EC initiative on **PRIPs** is meant to build **on MiFID rules and KII disclosure** to fill gaps and establish a level playing field in the distribution to the public of substitute products (funds, insurance policies, ect...).

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Q&A session

