



ESAs consult on proposed technical changes to the key information document for PRIIPs

Introduction

The European Supervisory Authorities ("**ESAs**") have issued a consultation paper ("**CP**") on targeted amendments to the Delegated Regulation covering the rules for the key information document ("**KID**") for Packaged Retail and Insurance Based Products ("**PRIIPs**"). Rather than take the opportunity to address the major concerns relating to the PRIIPs regime raised by the investment funds' industry, the CP instead focusses on a number of specific technical amendments (most notably, relating to changing the approach for presenting performance scenarios). In many instances, the CP discusses various alternate options, rather than putting forward concrete proposed amendments. The fundamental issues faced by PRIIP manufacturers remain, namely the sheer complexity of producing a KID involving a large amount of internal and external resources, and trying to apply detailed, prescribed methodology to all manner of investment products whilst being mindful that producing a document that is held to be materially misleading could create a potential liability if investors rely on the document.

The associated press release can be found [here](#) and the CP itself is [here](#).

The ESAs intend the amendments to apply from 1 January 2020 (subject to endorsement by the European Commission and the necessary European Parliament and Council of the EU scrutiny period).

Overview of proposed amendments

The proposals relate to tackling key issues that have arisen since the implementation of the PRIIPs regime. The proposals also propose certain legislative changes to avoid the possibility of duplicating information requirements for UCITS funds from 1 January 2020, the date upon which the current exemption for UCITS funds to produce a PRIIPs KID will expire (such proposals not being examined in this bulletin). The ESAs have limited the amendments to what they view as the most pressing issues.

Focussing on the proposals which relate to addressing issues arising since the introduction of the regime, the key proposals relate to:

- **Past performance:** various issues are discussed in relation to the KID's information on past performance, including (i) the fact that such information may not be available; (ii) whether the presentation of the past

performance information should be based on the approach currently used for UCITS KIDs (that is, in the form of a bar chart covering the past 10 years); and (iii) whether simulated past performance should be included in the KID where actual past performance is not available;

- **Narrative explanations:** proposals in relation to amending the narrative explanations (which are intended to manage retail investors expectations as to the likelihood of receiving the possible returns presented) include (i) a more prominent statement that the scenarios are based on simulations; and (ii) shortening the narrative explanations and highlighting the key messages in bold;
- **Future performance scenarios:** options explored include (i) changing the methodology to derive future performance scenario figures such that the expected performance would be the risk neutral expectation based on the expected values of interest rates and all relevant cash flows; and (ii) presenting future performance scenarios using a range table or graph. Another option considered is to extend the historical period used to measure performance from 5 years to 10 years which, if introduced now, the ESAs expect would reduce expectations for returns (in particular under the moderate scenario) due to the inclusion of the performance during the financial crisis (2008-2009);
- **Market risk measure ("MRM") calculation:** as the calculation method for the MRM currently only provides for single investment or premium products, the proposals address the position for PRIIPs with regular investor payments;
- **Narratives for the Summary Risk Indicator ("SRI"):** the ESAs propose to increase the SRI narrative explanation for specifying risks, which can be used where the SRI may not capture all material risks, from 200 to 300 characters;
- **Narrative for performance fees – composition of costs table:** the proposals provide for more flexibility in adding narrative to the prescribed text; and
- **Example amended performance scenarios:** the CP includes examples of how the performance scenarios would be presented based on the proposed amendments.

AIC response

Following publication, the AIC published a [press release](#) in which the AIC Chair, Ian Sayers, states, “Given that it took over 10 years to get where we are today, it is unrealistic to expect that the problems with KIDs can be resolved in 10 weeks. The proposals may be a step in the right direction, but fail to address the fundamental flaw of using past performance to predict the future. The proposed changes look too technical for ordinary investors and do not address our concerns about the understatement of risk. The proposals demonstrate why the KIDs rules should be suspended to allow time to fix the problems properly and permanently. Otherwise, we will just be back here again in 12 months’ time.”

Next steps

The deadline for submission of feedback is by 6 December 2018.

The ESAs intend to submit the amendments in the form of regulatory technical standards ("**RTS**") to the European Commission for endorsement during January 2019 since the European Parliament elections are due to take place towards the end of May. The ESAs will also publish a final report, including feedback on the consultation, in January 2019.

The proposals are made in the context of a wider and more comprehensive review of the PRIIPs framework by the European Commission, which was envisaged to take place by the end of this year. This was intended to follow from two years of application; however as the original application date needed to be deferred by one year this shortened the time period for a review. In view of this, the European Commission has deferred the review of the PRIIPs Regulation until a later date in order to allow for the collection of robust evidence and data.

Contacts



[Sam Kay](#)

Head of Investment Funds

T: 020 7295 3334



[Aaron Stocks](#)

Partner, Investment Funds

T: 020 7295 3319



[Jeremy Elmore](#)

Partner, Investment Funds

T: 020 7295 3453



[Will Normand](#)

Partner, Investment Funds

T: 020 7295 3169

Travers Smith LLP is a limited liability partnership registered in England and Wales under number OC 336962 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office is at 10 Snow Hill, London EC1A 2AL, United Kingdom.

[Privacy and Cookies](#) - [Legal Status and Rules](#) - [About Us](#)

We track when this email is opened and the use of related links (such as "forward to a friend"). Read more about how we collect and use personal data in our [Privacy Policy](#)

www.traverssmith.com
[Unsubscribe from Email List](#)
[Update my preferences](#)

10 Snow Hill London EC1A 2AL
T +44 (0) 20 7295 3000
F +44 (0) 20 7295 3500