

**To the members of the SFAMA**



Basel, 22<sup>nd</sup> October 2018  
circular DCA

**No. 06/2018**

## **PRIIPs Regulation – latest news**

Dear Madam or Sir

As a reminder UCITS and retail AIFs, which provide for a UCITS-like KIID according to national rules, are exempt from the scope of the PRIIPs Regulation until 31 December 2019<sup>1</sup>.

The UCITS KIID and the PRIIPs KID share the same fundamental objective to provide essential information to retail investors to enable them to make well-informed investment decisions but they follow different approaches in format and content.

As fund managers have spend considerable resources in providing KIIDs for all their funds only a few years before the PRIIPs Regulation was adopted, it was decided that a two-step approach for the UCITS KIID was essential, to prevent untimely disruption to retail investors who are still getting used to the KIID and to leverage the experience gained.

Therefore the EU co-legislators explicitly called the European Commission (EC)<sup>2</sup>, as part of the PRIIPs review due by 31 December 2018, to consider explicitly whether the UCITS exemption should be prolonged, the UCITS KIID should be considered equivalent to the PRIIPs KID or it should be replaced by the latter.

With this original timing, it would have left the EC two calendar years after the PRIIPs Regulation came into force before being required to make recommendations about the future of the UCITS KIID. Unfortunately the drafting of the Level 2 measures took longer than expected and the entry into force of the PRIIPs Regulation was postponed by one calendar year until 3 January 2018 but the date relative to the review was not changed.

We know that the EC now intends to postpone the PRIIPs review by one year i.e. from 31 December 2018 to 31 December 2019 on the grounds that it is too soon properly to review the impact of the regulation.

In the meantime and in the absence of legislative actions, the UCITS KIID exemption from the PRIIPs regulation 'scope will expire and all retail funds will be bound to produce PRIIPs KID from 1 January 2020 onwards. At the same time UCITS will be still subject to the obligation to provide investors with UCITS KIIDs for which no sunset clause exists under the UCITS framework.

<sup>1</sup> Art. 32 of Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs Regulation) - <https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A32014R1286>

<sup>2</sup> Art. 33 of Regulation (EU) N0 1286/2014

Corrective legislative steps must be undertaken early enough in 2019 in order to prevent a situation in which two similar legal information documents with largely inconsistent data would need to be provided at once to UCITS investors.

On 1<sup>st</sup> October the European Supervisory Authorities (ESMA, EIOPA and EBA, the ESAs) addressed a letter to the EC<sup>3</sup> expressing their concerns regarding the possibility of duplicating information requirements for investment funds from 1 January 2020 and the importance of legislative changes to avoid such a situation. Taking into account the time needed for the co-legislators to scrutinise any amendments to the Level 2 measures<sup>4</sup>, the ESAs intend to submit proposals to the EC in the first quarter of 2019.

EFAMA fully supports the ESA's timely intervention and calls for action prior to the review of the PRIIPs legislation, now expected to be delayed. Moreover EFAMA asked the EC to prolong the UCITS exemption to avoid confusing investors with duplicative disclosures<sup>5</sup>. EFAMA believes that if the PRIIPs review is delayed, the UCITS exemption should be postponed accordingly to ensure investors do not receive confusing and misleading information in the meantime. It strongly believes it would be counterproductive for the EC to replace the UCITS KIID by the PRIIPs KID before a comprehensive review and thorough consumer testing have been conducted on PRIIPs. Failure to do so would have negative consequences for retail investors. EFAMA believes that only when conducting the PRIIPs review should the EC assess the future of the UCITS exemption, as is mandated in the law.

Please also note that EFAMA has produced an evidence paper providing both real data and evidence supporting the fact that the PRIIPs KID is causing serious detriment to retail investors and concrete suggestions for solutions to some of the main flaws of the legislation, including the calculation of transaction costs and the disclosure of future performance scenarios<sup>6</sup>. EFAMA has already asked the EC to resolve these issues.

**SFAMA is closely following the developments regarding PRIIPs KID and will keep you informed.**

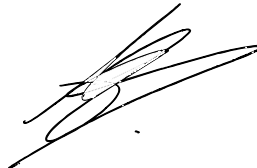
Please do not hesitate to address your questions to Markus Fuchs (markus.fuchs@sfama.ch) or Delphine Calonne (delphine.calonne@sfama.ch).

Sincerely yours

**Swiss Funds & Asset Management Association SFAMA**



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<sup>3</sup> <https://esas-joint-committee.europa.eu/Publications/Letters/JC%202018%2055%20Joint%20letter%20to%20EC%20on%20PRIIPs.pdf>

<sup>4</sup> Moreover the EU elections are scheduled for May 2019.

<sup>5</sup> <https://www.efama.org/Pages/Submitted%20after%202018-03-12T16%2022%2007/EFAMA-calls-on-the-European-Commission-to-urgently-postpone-the-UCITS-exemption-to-protect-consumers.aspx>

<sup>6</sup> <https://www.efama.org/Pages/Submitted%20after%202018-03-12T16%2022%2007/EFAMA-calls-on-the-European-Commission-to-urgently-postpone-the-UCITS-exemption-to-protect-consumers.aspx>