



## Is PRIIPs Exemption for UCITS To Be Extended Once More?

November 2021

As previously reported ([here](#)), the PRIIPs exemption for UCITS was set to be extended by six months, from 31 December 2021 to 30 June 2022, after the Commission published this date as part of its adoption of legislative amendments to the PRIIPs regime last September. However, in a welcome development for UCITS managers and distributors, this exemption end-date is proposed to be further extended, until 31 December 2022, after revisions to the Commission-adopted PRIIPs amendments were proposed by the European Parliament on 26 October 2021 with, according to EFAMA, the full support of the Council. The outcome of the Parliament's proposal is still awaited however, along with final legislation formalising any extension of the PRIIPs exemption for UCITS which remains scheduled to end (at least formally) on 31 December 2021.

Building on our October briefing ([here](#)) highlighting the key PRIIPs pain-points for UCITS managers, the following FAQ is intended to assist UCITS managers' preparations for compliance with the PRIIPs regime from the end of the exemption for UCITS.

### Who must produce a PRIIPs KID?

For any PRIIP (term includes UCITS and AIFs) "made available" to EEA-based retail investors, a PRIIP manufacturer (term includes fund management company) must produce a PRIIPs KID and anyone advising on or selling that PRIIP is obliged to provide the retail investor with that PRIIPs KID. The term "made available" is not defined but guidance from the Commission clarifies that a PRIIPs KID is required whether the PRIIP is sold with advice or not, sold at the initiative of the retail investor or otherwise and irrespective of whether the PRIIP is EU based or established in a third country i.e., the determining factor is whether the product comes within the definition of a PRIIP and is sold to an EEA-based retail investor.

### What is a retail investor under PRIIPs?

Any investor which does not come within the definition of a MiFID professional investor (principally institutional investors) will be a retail investor under PRIIPs.

### Will all UCITS be required to produce a PRIIPs KID?

No, only UCITS sold to EEA-based retail investors will require a PRIIPs KID. UCITS sold to institutional investors and/or non-EEA based retail investors will not require a PRIIPs KID. However, all UCITS remain subject to the UCITS requirement to produce a UCITS KIID and, as a result, any UCITS which does not produce a PRIIPs KID will still be required to produce a UCITS KIID under UCITS rules.

### What if the UCITS is no longer actively marketed?

Under UCITS KIID rules, all UCITS must produce a UCITS KIID and ESMA guidance (ESMA UCITS Q&A 1a) provides for the maintenance of UCITS KIIDs, even where the UCITS is no longer marketed to the public, with an up-to-date version of the KIID to be made available to existing investors. Similarly, PRIIPs rules require the PRIIPs KID to be kept up-to-date with and revised versions to be made available promptly, however the requirement to maintain the PRIIPs KID is subject to the PRIIP remaining available to retail investors and fortunately ESMA UCITS Q&A 1a (unlike other Q&A) has not been carried over into PRIIPs rules for UCITS.

### What if the UCITS is only sold to professional investors?

PRIIPs sold only to professional investors are not in scope of the requirement to produce a PRIIPs KID. Therefore, UCITS sold to professional investors only are not required to produce a PRIIPs KID but remain subject to the requirement for all UCITS to produce a UCITS KIID. Under currently proposed PRIIPs-related amendments to UCITS rules, any UCITS that produces a PRIIPs KID will be considered to satisfy the UCITS KIID rules. While such proposal implies that UCITS sold to professional investors may choose whether to produce a PRIIPs KID or a UCITS KIID in satisfaction of their UCITS obligations, the availability of this choice is complicated by the exclusion of PRIIPs sold only to institutional investors from the PRIIPs regime. A requirement for UCITS management companies to produce both a PRIIPs KID for retail investors and a UCITS KIID for professional investors would be a most challenging and costly outcome of the current legislative proposals to apply PRIIPs rules to UCITS. Unfortunately, this issue has yet to be resolved with the European Supervisory Authorities (**ESA**) recently acknowledging, in the context of technical advice to the Commission on the PRIIPs regime, that they are not in a position to provide *"a recommendation on which document, if any, should be provided to professional investors instead of the UCITS KIID [ ] because the ESAs are of the view that more time is needed to reflect on this issue"*. Ultimately, industry is hopeful that key information for professional investors, whether in the form of a UCITS KIID or a PRIIPs KID, can be abolished and certainly there are some useful soundings from ESMA on this front (e.g., in the context of the MiFID II review and ESMA's Final Report on cost and charges disclosures). However, it is disappointing that the current opportunity to address the issue of whether key information is appropriate for professional investors has not, to date, been taken by EU legislators and regulators.

### What will happen to the UCITS KIID rules from the end of the PRIIPs exemption for UCITS

Based on current legislative proposals, the UCITS KIID rules will remain and be retained in their current form save for the amendment to allow UCITS produce a PRIIPs KID in satisfaction of their UCITS KIID obligations. As set out above, UCITS sold only to professional investors are not in scope of the PRIIPs regime but, under existing rules and currently proposed legislative amendments, continue to be subject to the requirement to produce a UCITS KIID. Notably, the UK FCA has also chosen to retain the UK UCITS KIID rules by extending the UK PRIIPs exemption for UCITS for five years, meaning that UCITS will be required to continue producing a UCITS KIID until December 2026 in the UK. The UK FCA is also reviewing the onshored PRIIPs rules and, on 3 November 2021, announced a revised timeline for amendments arising out of that review. While the FCA expected final PRIIPs rules to take effect in January 2022, it is now aiming to publish these in Q1 2022.

### Next steps

If EU legislators formally approve the extension of the PRIIPs exemption for UCITS, which they are expected to do in the coming weeks, UCITS will have until 1 January 2023 to produce a PRIIPs KID in compliance with the PRIIPs regime.

---

## WILLIAM FRY

DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

William Fry LLP | T: +353 1 639 5000 | E: info@williamfry.com

[williamfry.com](http://williamfry.com)

This briefing is provided for information only and does not constitute legal advice