



Asset Management & Investment Funds Update

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ESA seek clarity of PRIIPs KID notification rules for UCITS

On 29 April 2022, the European Supervisory Authorities (the **ESA**) published recommended revisions to the PRIIPs Regulation which were submitted to the Commission in connection with its review of the PRIIPs regime.

As per previous briefings (see [here](#)), UCITS will first become subject to the PRIIPs regime following the end of the PRIIPs transition period for UCITS on 1 January 2023. From that date, UCITS will be obliged to prepare and provide a PRIIPs Key Information Document (**KID**), in place of the UCITS KIID, to all EEA-based retail investors. In respect of professional investors and non-EEA retail investors, UCITS may opt to produce either a PRIIPs KID or a UCITS KIID. UCITS managers' assessment in this regard should, where relevant, take account of UK rules which, until 31 December 2026, require UCITS marketed to UK retail investors to produce a UCITS KIID.

While the ESA have recommended a wide range of amendments to the current PRIIPs regime, it is not expected that these amendments will be finalised ahead of the application of the PRIIPs regime to UCITS from 1 January 2023. See [here](#) for further details of the PRIIPs regime which will apply to UCITS from next January.

NCA Notification of PRIIPs KID by UCITS

As part of their PRIIPs recommendations, the ESA have sought clarity from the Commission on certain aspects of the regime in light of its upcoming application to UCITS. Specifically, the ESA note that it is not currently clear how the regulatory notification of PRIIPs KIDs will apply post January 2023, given the divergence between PRIIPs and UCITS KIID notification rules.

PRIIPs NCA notification requirements

Under the PRIIPs regime, Member States have the option to require ex-ante notification of the PRIIPs KID to the host NCA in the Member State in which the PRIIPs is marketed. The ESA note that there are divergent uses of this facility across the EU; eight Member States (Belgium, Finland, France, Italy, Latvia, Portugal, Slovenia and Spain) require ex-ante notification either (i) for certain PRIIPs, (ii) for all PRIIPs, (iii) in the case of significant KID updates, (iv) along with additional marketing materials or (v) for review before the product is made available. In addition, some NCAs only require an ex-post notification to facilitate a risk-based review of KIDs. While the Central Bank has yet to publish its PRIIPs KID filing requirements for UCITS, the published filing rules for AIFs reference ex-post notification of new and amended PRIIPs KIDs.

To address the lack of convergence between Member States' PRIIPs KID notification rules, the ESA "*consider that a broader use of the ex-ante notification [although not for review or approval] option would have material benefits.*"

UCITS NCA notification requirements

UCITS KIID rules currently require UCITS managers to file the UCITS KIID with the UCITS' home NCA.

The Central Bank requires new UCITS KIID to be submitted prior to the approval of a new sub-fund. In the event of any subsequent amendments, including as part of the annual KIID update (which is not a feature of the PRIIPs regime), the UCITS KIID is required to be filed along with the necessary confirmations from the UCITS manager as to the KIID's compliance with applicable rules and regulatory guidelines.

NCA notification of PRIIPs KID by UCITS

The ESA have sought clarity from the Commission as to whether, post 1 January 2023, UCITS are required to file the PRIIPs KID with NCAs in the same way as UCITS KIIDs are required to be filed. The ESA see two possible applications of the PRIIPs KID notification requirement post 1 January 2023:

1. UCITS managers need to send the PRIIPs KID (instead of the UCITS KIID) to the home NCA as per existing UCITS KIID rules; or
2. where UCITS KIID rules no longer apply, UCITS managers would not need to send their PRIIPs KID to any NCA, except in those Member States where the ex-ante notification option, allowed by the PRIIPs Regulation, has been implemented. And in that case, the notification would need to be made to the host NCA of the Member States where UCITS is to be marketed.

A response from the Commission to the ESA request for clarity is now awaited.

Additional PRIIPs regime amendments recommended by the ESA

In addition, the ESA recommend:

- clarifying the 'made available' concept under the PRIIPs regime which would clarify the circumstances under which a PRIIP manufacturer is required to draw up and publish a PRIIPs KID on its website and distinguish between the responsibilities of PRIIPs manufacturers and distributors.
- including past performance in the PRIIPs KID (as opposed to the current rule for past performance to be published on a website linked in the KID) for UCITS and other relevant PRIIPs.
- aligning PRIIPs investor notification rules with the current UCITS rules. Currently, PRIIPs KIDs are, in the case of successive transactions in the same PRIIP, to be provided before the first transaction and at the time of the first transaction (where the term 'transaction' is interpreted to include a decision to remain in the UCITS) after the PRIIPs KID has been amended. UCITS KIIDs are, however, required under UCITS rules to be provided before the first transaction and if an investor makes changes e.g., additional subscriptions. The PRIIPs rules therefore require additional investor notification of the PRIIPs KID over and above the UCITS rules as investors which maintain an investment in a UCITS would need to be provided with any amended PRIIPs KID irrespective of whether the investor has instigated a transaction with the UCITS.
- including a new section in the PRIIPs KID to show prominently where, in line with SFDR, a PRIIP has sustainable investment as its objective, or it promotes environmental or social characteristics.
- including provisions to facilitate the digitalisation of the PRIIPs KID, to improve the effectiveness of sanctions under the PRIIPs regime and to clarify the scope of the PRIIPs regime.

Next Steps

The Commission will now consider the ESA's recommendations for amendments to the PRIIPs regime, including the ESA's request for clarification of the regime ahead of its application to UCITS on 1 January 2023.

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