

BVI's position on the quick-fix amendments to the PRIIPs and UCITS frameworks

Most funds managed by BVI¹ members are currently exempt from the PRIIPs requirements and bound to inform investors by providing UCITS or UCITS-like KIIDs according to Article 32 (1) and (2) PRIIPs Regulation. These funds will be directly affected by the prolongation of the fund exemption as well as the phasing-out approach for the UCITS KIIDs as proposed by the EU Commission. This will pertain to around 60.000 funds and share classes distributed alone in the German market. Therefore, we are grateful for the opportunity to comment on the relevant amendments to the PRIIPs and UCITS frameworks.

Overall, we welcome the quick-fix initiatives and the Commission's endeavour to facilitate a smooth implementation of the PRIIPs KIDs. In order to succeed in this regard, it is necessary to account for the following two key requests:

1. Fund companies need at least 12 months for the practical implementation of the technical amendments

Since the beginning of the regulatory process aiming at the revision of the PRIIPs RTS, we have stressed that product providers and distributors require at least twelve months for the practical implementation of the amended technical provisions. This is due to the complex process of implementing new regulatory information standards that involves several stages and different stakeholders:

- Technical specifications require in-depth legal analysis and further clarifications. Such analysis is not fully reliable if conducted solely on the basis of the technical recommendations by the ESAs. Identified practical problems or unclarity cannot be properly addressed. In particular, we understand that for formal reasons the ESAs are not allowed to start with interpretational work at Level 3 before the final RTS texts have been published. However, some outstanding questions for clarification are of major importance for the implementation process².
- Amended PRIIPs standards involve new calculation methodologies that require onboarding of new data sources and technical solutions. This pertains for instance to the new methodology for performance scenarios especially for UCITS and retail AIFs that entails the necessity to concatenate the past performance data of a specific fund with the historical performance of a relevant benchmark or proxy in order to arrive at a sufficiently long performance history. Such new data requirements must be identified, properly sourced and back-tested to ensure flawless disclosures.

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 117 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 27%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

² E.g. there are substantial unclarity in the requirements for cost calculation in products investing in real estate that need urgent clarification in order to guarantee that the disclosed results of cost calculations are comparable for investors and facilitate truly informed investment decisions.



- Amended PRIIPs standards pertain to all retail funds with very different investment objectives and strategies. This means that technical implementation, once completed, must not be expected to result in a fully automated process, but will entail manifold adaptations and additional scrutiny steps for certain groups of products or even individual funds. Given that it is market standard to produce a UCITS KIID – to be substituted by the PRIIPs KID – at the level of individual share classes, a medium-sized fund manager will typically need to produce several hundreds of KIDs. When taking translations into account, this figure can easily rise to thousands for one firm only.
- Data exchange with insurers necessitates earlier deadlines for internal implementation. It needs to be borne in mind that under the PRIIPs framework, fund providers are not only responsible for producing PRIIPs KIDs for their own products, but also have to assist insurance companies with generating PRIIPs KIDs for multi-option products that offer investment opportunities in funds. In practice, this entails a systematic delivery of fund-related data that are needed by insurance companies in order to comply with their own disclosure obligations. In this regard, a structured dialogue between fund providers and insurers has been initiated within the FinDatEx with the aim of adapting the relevant PRIIPs templates. However, these complex technical discussions cannot be properly conducted without the final RTS texts. In any case, insurance companies already communicated their anticipation of receiving a full set of fund related PRIIPs data at least three months before the legal date of application. This further reduces the length of the implementation period for fund managers.

The Commission has been well informed that the working assumption for the industry is a twelve-months period for implementation. Nonetheless, contrary to the initial planning, the revised regulatory technical standards to amend provisions on the content and presentation of the KID in the Commission Delegated Regulation (EU) 2017/653 have only been published a few days ago. Without these technical specifications becoming available as the final text in all national languages, it has not been possible to commence the implementation process in practice. As of today, market participants are thus left with less than 10 instead of the originally planned 12 months for practical implementation.

Against this backdrop, we maintain our request that the expiry date of the fund exemption under Article 32 PRIIPs Regulation must allow for an implementation period of at least twelve months following publication of the final revised RTS. In order to provide for all contingencies in terms of the further process, an extension of the fund exemptions until 31 December 2022 should be reasonable for facilitating a smooth practical implementation by all parties involved.

In this regard, it is necessary:

- In Article 32(1) of Regulation (EU) No 1286/2014 to replace the date '31 December 2021' by **'31 December 2022'**,
- In Article 2(1) of the Commission proposal for amendments to the UCITS Directive to stipulate that Member States shall adopt and publish the measures necessary to comply with this Directive by **31 December 2022** and that those measures shall apply from **1 January 2023**.

Article 2 of the proposed Delegated Regulation from 7. September 2021 amending the PRIIPs RTS must be adapted accordingly in order to ensure that the new PRIIPs standards become applicable across the market at the same time.



2. Obligation to provide PRIIPs KIDs should apply to retail investors only

Our understanding of the Commission's proposal under the new Art. 82a UCITS Directive is that a PRIIPs KID will be deemed equivalent to the UCITS KIID and will be able to replace it in any circumstances. In order to avoid misinterpretations, it would be helpful to clarify that the details of the KID provision, including i.e. the revision modalities, are in this case solely governed by the PRIIPs regime.

The underlying scope of application, however, would remain unchanged and would still be governed by the UCITS framework. In this context, our understanding is that while UCITS managers will be allowed to use the PRIIPs KID for information of both retail and professional investors, the need to provide also professional investors with the KID in excess of the PRIIPs Regulation will still apply.

This result disadvantages UCITS against other types of PRIIPs, i.e. retail AIFs, structured products and insurance-based PRIIPs. More important, however, it maintains the obligation to provide professional investors with a three-pages key information document which they neither need nor request. Indeed, from the practical perspective, it cannot be stressed enough that the legal requirement under the UCITS Directive to produce a KIID for each managed UCITS and to provide it before investing to each and every investor has ever since be a source of red tape and annoyance for both fund providers and their professional clients. The duty arising in this respect under the UCITS regime has been only a by-product of the general all-encompassing approach under the UCITS Directive which does not differentiate between different investor categories, but always applies the highest protection standards designed for retail investors.

The PRIIPs Regulation takes these market realities into account by making the duty to produce a PRIIPs KID conditional upon the product being made available to retail investors. Furthermore, the obligation to provide the PRIIPs KID at the point of sale applies only in case of advice or sale services to retail investors.

Therefore, we urge the Commission to tackle this obvious misalignment between the UCITS and the PRIIPs framework. In our view, the proposed modification of the UCITS key information regime provides for a unique opportunity to align the scope of application with the PRIIPs approach and avoid discrimination of UCITS. To this effect, the **new Art. 82a should be complemented as follows:**

*“Member States shall ensure that where an investment company or, for any of the common funds it manages, a management company draws up, provides, revises and translates a key information document **for retail investors** which complies with the requirements for key information documents laid down in Regulation (EU) No 1286/2014 of the European Parliament and of the Council, competent authorities consider that key information document as satisfying **all** requirements applicable to key investor information as set out in Articles 78 to 82 and Article 94 of this Directive.”*

Should this suggestion be for any reason not realisable as part of the current quick-fix process, we insist that the Commission tackles the issue of the unequal treatment of UCITS compared with other PRIIPs as regards key information requirements at the next occasion of orderly reopening of the UCITS Directive. According to our understanding, such occasion should arise in the context of the AIFMD review that is meant to entail several adaptations of the UCITS framework.