



Regulatory Newsflash

ESAs submitted PRIIPs Draft RTS to the European Commission

On 3 February, the **European Supervisory Authorities** (ESAs) submitted [draft Regulatory Technical Standards \(RTS\)](#) that set out a series of proposed amends to the PRIIPs Delegated Regulation to the European Commission.

The ESAs [previously consulted](#) on changes to the PRIIPs KID in October 2019. The consultation proposed amendments to performance scenario methodologies, information on investment costs, specific issues on different types of investment funds, and specific issues for PRIIPs offering a range of options for investment (so-called "Multi-Option Products").

In July 2020, ESMA and the EBA, (but not EIOPA) adopted [a report](#) with final proposals for amending the PRIIPs Delegated Regulation that followed the consultation. The EIOPA Board has now agreed to support the draft RTS based on the understanding that the Commission will conduct a wider review of the PRIIPs level 1 Regulation which will thoroughly examine the PRIIPs framework, including the following issues:

- How to achieve better alignment between PRIIPs, IDD and MiFID II in relation to costs disclosure;
- The scope of products as foreseen by the PRIIPs regulation;
- Ensuring that KIDs contain the key information necessary without being too complex for retail investors;
- The creation of a digitalised KID; and
- The need for a more tailored approach in some areas, such as for Multi-Option Products to maximise understanding and use of information

The ESAs' proposals for amendments to the RTS will be further discussed below.

Draft RTS – proposals ESAs

In summary, the amendments to the RTS contain the following proposals.

New methodologies to calculate appropriate performance scenarios

New methodologies to calculate appropriate performance scenarios and a revised presentation of these scenarios, with a view to ensuring that retail investors are not provided with inappropriate expectations about the possible returns they may receive.

- For non-structured investment funds and PRIIPs linked to these type of funds (e.g. unit-linked insurance based investment products), based on the testing conducted, the ESAs are of the view that the most justified proposal from the perspective of its technical soundness and understandability for consumers is to use **scenarios estimated more directly from the actual price history of the fund or a relevant benchmark**; and
- For other types of PRIIPs, such as structured products, it is **proposed to keep the existing methodology** in the PRIIPs Delegated Regulation **or to make minor adjustments**. The main adjustment is to allow the PRIIP manufacturer to use lower percentiles of the estimated distribution of future returns used to generate the scenarios (i.e. to provide more conservative results) in certain circumstances.

Presentation of performance scenarios

The ESAs propose a revision of the presentation of performance scenarios.

- The ESAs propose to **retain the standardised 1 year holding period**, given that this is important in providing a common point of comparison (across PRIIPs with different recommended holding periods), as well as in demonstrating the impact of exiting the investment early.
- The ESAs propose to **limit the case where a second (middle) intermediate scenario would be shown to longer-term PRIIPs** with a recommended holding period of 10 years or more, in order to reduce the number of scenarios shown where possible.

Cost disclosure

The ESAs propose revisions to the summary cost indicators and changes to the content and presentation of information on the costs of PRIIPs, to allow retail investors to better understand the different types of cost structures, as well as to better facilitate the use of this information by persons selling or advising on PRIIPs :

- The ESAs have decided to **keep the structure of two separate tables originally stipulated in the PRIIPs RTS**, with a first table showing only aggregated figures in monetary and percentage terms, and the second one showing a breakdown per type of costs.
- The second table would include a new column describing the nature of each cost (including the calculation where possible) and an additional column aiming at greater alignment with the cost disclosure framework for PRIIPs.
- Adjustments to the use of the reduction in yield (RIY) as a summary (total) cost indicator in percentage terms.

- In terms of the **costs at intermediate points in time**, the ESAs will require the use of a third holding period only in the case of products with a recommended holding period of 10 years or more and will retain the current approach that this holding period is set at half of the recommended holding period.
- The ESAs aim to address the treatment of cost disclosures for real estate or private equity fund in level 3 guidance.

Calculation of transactions costs

The ESAs propose modifications to the methodology to calculate transaction costs to address practical challenges that have arisen when applying the existing rules, and address issues regarding the application to certain types of underlying investments.

- The **slippage methodology will be retained**, however exemptions have been proposed to its use, such as where a PRIIP does not generate enough transactions to eliminate market movement with enough statistical certainty.
- The ESAs have **retained the proposed floor of a minimum of explicit transaction costs being disclosed** and have specified how this should be applied in relation to anti-dilution mechanisms.
- Proportionality thresholds continue to be supported however the ESAs aim to provide more guidance regarding these in level 3 measures.

Multi-option products (MOPs)

The ESAs propose some refinements to the rules for PRIIPs offering a range of options for investment :

- The proposal to provide a range of costs per risk class and to provide additional references to underlying investments will not be taken forward. The main argument was that it would introduce too many different figures into the cost tables, which was seen as likely to confuse consumers.
- The ESAs will retain the proposal to provide a separation, in the KID, between the costs of the insurance contract or wrapper and the costs associated with the underlying investment options.

UCITS exemption

The incorporation of existing provisions applying to investment funds into the PRIIPs framework, given the expiry of the exemption in Article 32 of the PRIIPs Regulation on 31 December 2021.

- The ESAs recommend to **avoid the co-existence of the PRIIPs KID and the UCITS KIID**. This is expected to mean that that the **UCITS Directive would need to be amended in such a way that UCITS managers no longer have to provide a UCITS KIID to retail investors**.
- The ESAs propose to extend the requirements of Article 4 of the UCITS Directive to certain PRIIPs other than UCITS.

Publication of information on past performance

Regarding the requirement for certain types of investment funds and insurance-based investment products to publish information on the past performance of the product and to refer to this information in the KID, the ESAs formulate the following opinions :

- For the moment, a **requirement for past performance to be included in PRIIPs KIDs, is seen as incompatible with the level 1 PRIIPs Regulation.**
- Taking this into account, a “second best” approach, which meets the regulatory aims and is considered to be clearly compatible with the current Level 1 framework, is to **require relevant PRIIP manufacturers to publish past performance information in a document separate from the KID.** However, the ESAs would still recommend, as a preferred approach, to include past performance information within the main contents of the KID.
- The ESAs have specified the types of PRIIPs this requirement would apply to.
- In terms of presentation, it is proposed to **draw on the existing approach in the UCITS KIID** and only make specific adjustments where these are necessary in a PRIIPs context.
- The ESAs propose to exceed the 3 page limit to 4 pages for KIDs only in the case of those PRIIPs that need to disclose past performance.
- The ESAs have also clarified the meaning of being managed in reference to a benchmark. In doing so the ESAs referred to the ESMA UCITS benchmark disclosure Q&As published in March 2019.

Targeted amendments to the PRIIPs Regulation

The ESAs have also made recommendations for targeted amendments to the PRIIPs (Level 1) Regulation. These recommendations concern the following issues:

- For the level 1 Regulation to be amended to **allow the disclosure of past performance** within the main content of KIDs;
- To **avoid the co-existence of UCITS KIIDs and PRIIPs KIDs,** it is proposed to amend the UCITS Directive in such a way that UCITS managers no longer have to provide a UCITS KIID to retail investors;
- A change to Article 13 (4) of the level 1 PRIIPs Regulation which addresses **successive transactions for the same PRIIP** given significant practical challenges to apply the existing approach to UCITS regular savings plans; and
- A suggestion that the co-legislations consider a minor change to facilitate the **non-paper delivery of the KID.**

Next steps

Having now been submitted to the Commission, **the ESAs are supportive of the RTS applying from the beginning of 2022.** However, the application date will depend on the timeframe for scrutiny from the European Parliament and Council. The ESAs are also considering the provision of level 3 measures.

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