



Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS)

Assogestioni¹ welcomes the opportunity to provide feedback on the Commission's proposal of amending Directive 2009/65/EC regarding the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS).

We strongly welcome the proposal that avoids the coexistence of the PRIIPs KID and the UCITS KIID which would have a negative outcome in terms of overall clarity and understandability of the EU disclosure requirements with two different pre-contractual information documents to be made available to investors from the end of the exemption period referred to in Article 32 of the PRIIPs Regulation.

However, we invite the European Commission to go further to ensure a level playing field for all market actors and remove all obstacles to the internal market for financial services and products.

In the absence of further changes or clarification to the UCITS Directive, only manufacturers subject both to PRIIPs Regulation and UCITS Directive must provide a PRIIPs KID for professional investors and probably keep updating the main elements of the key information for UCITS no longer offered to the public.

Therefore, we urge the Commission to tackle the two misalignments between the UCITS and the PRIIPs framework. In line with the PRIIPs regulation, it should be:

- reconsidered the need for the professional investor to receive any KI(I)D, especially a KIID, and
- clarified the pre-contractual function of the KIID, to avoid updating a KID for UCITS no longer marketed to the public.

As regard the timing for the transitional arrangements referred to in Article 32 and the synchronization of dates between UCITS and PRIIPs framework, we appreciate the proposal, but we believe essential to maintain at least a twelve-month period for the practical implementation of the amended technical provisions.

Please find below detailed comments and proposed amendments to the UCITS Directive.

1) Eliminate the KI(I)D for professional investors

According to the UCITS Directive (Article 78), the UCITS KIID currently needs to be provided not only to retail, but also to professional investors. UCITS funds that have, for example, class of unit or shares designated to professional investors with a different fee regime, should provide a UCITS KIID for such type of investors.

The PRIIPs Regulation only applies to products made available to retail investors and in the absence of further changes to the UCITS Directive, the PRIIPs KID (not necessarily the UCITS KIID - thanks to the proposed amendment) has yet to be provided to professional investors.

¹ Assogestioni is the trade body for Italian asset management industry and represents the interests of members who manage funds and discretionary mandates around € 2,520 billion (as of June 2021).



As professional investors analyse more complex information than that contained in KI(I)D, which is mainly intended to overcome the information asymmetries of retail investors, 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. A different PRIIPs manufacturers does not have to prepare a KID when the product is made available to professional investors with obvious consequences on the level playing field and costs for UCITS manufacturers.

One possible way to overcome the misalignment between the UCITS and the PRIIPs framework is replace the term “investors” with “retail investors” in the relevant KIID articles and recitals in the UCITS Directive. In addition, because there is no definition of retail and professional investors in the UCITS Directive, there could be room to also include such definition under Article 2, where necessary.

UCITS Directive quick fix	
Commission proposal	Proposed amendment
	<p><i>Recital (58)</i> Member States should make a clear distinction between marketing communications and obligatory investor disclosures provided for under this Directive. Obligatory investor disclosure includes key investor information to retail investors, the prospectus and annual and half-yearly reports.</p>
	<p><i>Recital (59)</i> Key investor information should be provided as a specific document to retail investors, free of charge, in good time before the subscription of the UCITS, in order to help them to reach informed investment decisions. Such key investor information should contain only the essential elements for making such decisions. The nature of the information to be found in the key investor information should be fully harmonised so as to ensure adequate investor protection and comparability. Key investor information should be presented in a short format. A single document of limited length presenting the information in a specified sequence is the most appropriate manner in which to achieve the clarity and simplicity of presentation that is required by retail investors, and should allow for useful comparisons, notably of costs and risk profile, relevant to the investment decision.</p>
	<p><i>Recital 61</i> Key investor information to retail investors should be produced for all UCITS. Management companies or, where applicable, investment companies should provide key investor information to the relevant entities, in accordance with the distribution method used (direct sales or intermediated sales). Intermediaries should provide key investor information to retail clients and potential retail clients.</p>
<p>Article 1</p> <p><i>Article 82a</i></p>	<p>Article 1</p> <p><i>Article 82a</i></p> <p>Key investor information provided through key information document</p>



<p>Key investor information provided through key information document</p> <p>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 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 the requirements applicable to key investor information as set out in Articles 78 to 82 and Article 94 of this Directive.</p>	<p>1. 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 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 the requirements applicable to key investor information as set out in Articles 78 to 82 and Article 94 of this Directive.</p> <p>2. The terms " investors", set out in Articles 78 to 82 of this Directive, is replaced by "retail investors".</p>
	<p><i>Article 2</i></p> <p>1. For the purposes of this Directive the following definitions apply: [...]</p> <p>(u) 'retail investor' means an investor who is not a professional investor; (v) 'professional investor' means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC;</p>

Should the elimination of the obligation to provide professional investors a key document be for any reason not realisable as part of the current quick-fix process, the key information document governed by the PRIIPs framework should be the only document that should be used for both retails and professional investors. An outright deletion of the KIID for the disclosure of key information will align information for all investor and avoid misinterpretation.

In order to ensure a consistent and ordnately application, the new Art. 82a should be complemented as follows:

UCITS Directive quick fix	
Commission proposal	Proposed amendment
<p>Article 1</p> <p><i>Article 82a</i></p> <p>Key investor information provided through key information document</p>	<p>Article 1</p> <p><i>Article 82a</i></p> <p>Key investor information provided through key information document</p>



<p>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 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 the requirements applicable to key investor information as set out in Articles 78 to 82 and Article 94 of this Directive.</p>	<p>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 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 the only document satisfying the requirements applicable to key investor information as set out in Articles 78 to 82 and Article 94 of this Directive.</p>
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2) Clarify (and eliminate) the updating of the KID for UCITS no longer marketed.

Article 82, paragraph 2 of the UCITS Directive requires keeping the main elements of the key information updated and ESMA, in Q&A n.1a², specifies that an update of the (UCITS) KIID should therefore be available to investors, within the same deadlines as for the annual update of this document, regardless of whether the 'UCITS is no longer marketed to the public'.

Article 5 of the PRIIPs Regulation requires a KID to PRIIPs "made available" to retail investors. The Commission Guidelines has also clarified that a KID is not required if PRIIPs is no longer made available to other retail investors (after 1 January 2018) and if contractual terms and conditions (agreed before that date) allow exiting the PRIIP³. On the same line, according to recital 19 of the PRIIPs Delegated Regulation⁴, the KID must contain up-to-date information to inform investors' decision as long as the product remains "available" to retail investors.

² ESMA. Questions and Answers Application of the UCITS Directive (ESMA34-43-392 16 July 2021). *Question 1a: Where an existing UCITS is no longer marketed to the public, should it be required to prepare a KIID? Answer 1a: In accordance with Article 82 of the UCITS Directive a UCITS is required to keep the essential elements of key investor information up-to-date. In accordance with Article 23 of Commission Regulation (EU) No 583/2010, a KIID with duly revised presentation of past performance of the UCITS shall be made available no later than 35 business days after 31 December each year. Notwithstanding that a UCITS is no longer marketed to the public, an up-to-date version of the KIID should be available to the existing investors.*

³ Communication from the Commission. Guidelines on the application of Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) (2017/C 218/02). *Point (12) Offers closed by 31 December 2017. Where a PRIIP is no longer made available to retail investors as of 1 January 2018 and changes to the existing commitments are only subject to the contractual terms and conditions agreed before that date, a KID is not required. Where those contractual terms and conditions allow exiting the PRIIP, but that PRIIP is no longer made available to other retail investors after 1 January 2018, a KID is not required.*

⁴ Commission Delegated Regulation (EU) 2017/653 of 8 March 2017. Recital (19): "PRIIP manufacturers must prepare key information documents that are accurate, fair, clear and not misleading. The information contained in the document should be capable of being relied on by a retail investor when making an investment decision, even in the months and years following the initial preparation of the key information document, for those PRIIPs that remain available to retail investors. Standards should therefore be laid down to ensure timely and appropriate review and revision of key information documents, so that those documents remain accurate, fair and clear."



That said, in the absence of a clarification there is legal uncertainty as to whether or not update the KID for UCITS no longer open for marketing after an initial subscription period for which a UCITS KIID has been made available.

We believe that PRIIPs manufactures subject to both PRIIPs regulations and UCITS Directive should not update neither the PRIIPs KID (thanks to the proposed amendment) nor the UCITS KIID for funds no longer marketed to investors (and not purchasable by investors on structured secondary market).

Such an update would create unlevel playing field between the different types of PRIIPs' manufacturers. It may also confuse current investors due to information overload as ex-post disclosure and not pre-contractual information has the task, among other, to help investors to evaluate the actual evolution of the investment made.

Therefore, to strengthen the pre-contractual function of the KI(I)D (give to retail investors key information before an investment decision is made) and to eliminate legal uncertainty, we invite the Commission to coordinate UCITS Directive in line with PRIIPs framework.

Should amendments to the UCITS Directive not possible as part of the current quick-fix process, we strongly welcome a Commission clarification.

As regards UCITS Directive's amendments, we propose to complement the recital 59 (Option 1) or, if such proposal is not enough, both recital 59 and article 82 (Option 2).

Option 1. Complement (only) the recital to clarify (and eliminate) the updating of the KID for UCITS no longer marketed.

UCITS Directive quick fix	
Commission proposal	Proposed amendment
	<p>Recital (59)</p> <p>Key investor information should be provided as a specific document to retail investors, free of charge, in good time before the subscription of the UCITS, in order to help them to reach informed investment decisions. Such key investor information should contain only the essential elements for making such decisions. The nature of the information to be found in the key investor information should be fully harmonised so as to ensure adequate investor protection and comparability. Key investor information should be presented in a short format. A single document of limited length presenting the information in a specified sequence is the most appropriate manner in which to achieve the clarity and simplicity of presentation that is required by retail investors, and should allow for useful comparisons, notably of costs and risk profile, relevant to the investment decision.</p>



	<p>The information contained in the document should be capable of being relied on by a retail investor when making an investment decision, even in the months and years following the initial preparation of the key investor information, for those UCITS that remain available to retail investors.</p>
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Option 2. Complement both recital and article to clarify (and eliminate) the updating of the KID for UCITS no longer marketed.

UCITS Directive quick fix	
Commission proposal	Proposed amendment
	<p>Recital (59) Key investor information should be provided as a specific document to retail investors, free of charge, in good time before the subscription of the UCITS, in order to help them to reach informed investment decisions. Such key investor information should contain only the essential elements for making such decisions. The nature of the information to be found in the key investor information should be fully harmonised so as to ensure adequate investor protection and comparability. Key investor information should be presented in a short format. A single document of limited length presenting the information in a specified sequence is the most appropriate manner in which to achieve the clarity and simplicity of presentation that is required by retail investors, and should allow for useful comparisons, notably of costs and risk profile, relevant to the investment decision.</p> <p>The information contained in the document should be capable of being relied on by a retail investor when making an investment decision, even in the months and years following the initial preparation of the key investor information, for those UCITS that remain available to retail investors.</p>
	<p>Article 82 1. UCITS shall send their key investor information and any amendments thereto, to the competent authorities of their home Member State. 2. The essential elements of key investor information of a UCITS that remain available to retail investors shall be kept up to date.</p>

3) Timeline



We appreciate and strongly support the quick-fix initiatives as regards the need to synchronize the application dates of the UCITS and PRIIPs framework and the six months extension of the transitional arrangements under article 32 of PRIIPs Regulation, however the delay in the adoption (and publication) of the amendments of the delegated regulation (EU) 2017/653 reduce the implementation period of the new regulation below the 12 months period of that originally envisaged.

Therefore, more time for the practical implementation and a coordination of L1 and L2 is needed.

For further details, please see our comments to the Proposal for a Regulation amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS.