

[ESAs consult on proposed changes to the key information document for PRIIPs](#)

The European Supervisory Authorities (ESAs) have today issued a consultation paper on targeted amendments to the Delegated Regulation covering the rules for the Key Information Document (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs).

The ESAs, on 1 October 2018, set out in a [letter](#) to the European Commission their intention to make proposals to support legislative changes to avoid the possibility of duplicating information requirements for investment funds from 1 January 2020, and to tackle key issues that have arisen since the implementation of the KID. The [consultation paper](#) addresses, in particular, amendments to the information regarding investment products' performance scenarios.

The proposals are made in the context of the ongoing discussions between the European co-legislators on the application of the KID by certain investment funds as well as the timing of a wider and more comprehensive review of PRIIPs, which was due this year. The outcome of this targeted review is without prejudice to that wider review, and it would be beneficial to conduct such a wider review early in the next term of the European Parliament.

In addition, when deciding upon the nature of their final recommendations following this consultation in January 2019, the ESAs will take into account the feedback from respondents to this consultation and the latest information of these political discussions on the application of the KID by certain investment funds and the timing of the wider review.

The deadline for submission of feedback is by Thursday, 6 December 2018.

The [consultation paper](#) and [template for comments](#) can be obtained via the following links.

Background

The KID for PRIIPs is a mandatory, three-page A4 information document to be provided to consumers before purchasing a PRIIP. PRIIPs include for example funds, structured products, unit-linked and with-profits life insurance contracts, and structured deposits.

The PRIIPs Regulation (No 1286/2014) defines the **main rules and principles** for KIDs. It is supplemented by a Delegated Regulation (2017/653) specifying the presentation and contents of the KID, which is based on Regulatory Technical Standards that the ESAs were mandated to develop.

Performance scenarios are included in the Section of the KID titled “What are the risks and what could I get in return?” They indicate how the investment could perform under various different scenarios.

[Africa-Europe Alliance: boosting sustainable energy investments in Africa](#)

Today at the Africa Investment Forum in Johannesburg organised by the African Development Bank, the European Union and the African Union have launched the EU-Africa high-level platform on sustainable energy investments in Africa.

During his [State of the Union speech](#) President **Juncker** has announced the new [‘Africa – Europe Alliance for Sustainable Investment and Jobs’](#) to substantially boost investment in Africa, strengthen trade, create jobs, and invest in education and skills. The high-level platform that was set in motion today represents a concrete action under this alliance to boost strategic investments and strengthen the role of the private sector.

Commissioner for Internal Market, Industry, Entrepreneurship and SMEs, Elżbieta **Bieńkowska**, said in Johannesburg: *“If we are serious about sustainable energy investments in Africa, we need everybody on board, including the private sector. The high-level platform will pave the way for that: experts from the public, private, academic and financial sectors will jointly discuss challenges and barriers to sustainable investment in this area and help to address them.”*

The High Level Platform brings together public, private and financial operators as well as academia from Africa and Europe. They will examine challenges and strategic interests that could accelerate impact, especially for sustainable growth and jobs. The high-level platform aims to attract and boost responsible and sustainable private investments towards sustainable energy in Africa.

A concrete outcome of the high-level platform launch event was the announcement of three streams of work, 1) identify energy investments with high impact for growth and job creation, 2) analyse energy investment risks and propose policy guidelines for a sustainable investment and business environment and 3) boost exchanges between African and European private sector.

Background

By bringing energy actors from the private and public sectors together from both continents, the high-level platform will foster the partnership between

European and African businesses, and support the 'Africa- EU Alliance for Sustainable Investment and Jobs'. It will help to make most of opportunities around sustainable energy investments in Africa, as well as to better address challenges and key barriers that currently hinder it.

The [Africa Investment Forum](#) in Johannesburg takes place from 7-9 November 2018 and is organised by the African Development Bank. The Forum is the place where project sponsors, borrowers, lenders, and public and private sector investors come together to accelerate Africa's investment opportunities – especially the energy sector.

The '[Africa-Europe Alliance for Sustainable Investment and Jobs](#)' builds on the commitments taken during the [African Union – European Union Summit](#), which took place in November last year in Abidjan, where the two continents agreed to strengthen their partnership. It sets out the key strands of action for a stronger economic agenda for the EU and its African partners.

Access to sustainable energy plays a fundamental role in development. The objective of the [2030 Agenda for Sustainable Development](#) is to give universal access to affordable, reliable, modern energy services. The EU is determined to help partner countries to increase renewable energy generation and to diversify their energy sources ensuring the transition to a smart, secure, resilient and sustainable energy system for all. Mobilisation of the private sector is crucial for this endeavour.

For More Information

[Africa-Europe Alliance](#)

[ESMA proposes a regulatory change to support the Brexit preparations of counterparties to uncleared OTC derivatives](#)

In the context of the on-going withdrawal negotiations between the EU and the UK, and to address the situation where a UK counterparty may no longer be able to provide certain services across the EU, counterparties in the EU may want to novate their non-centrally cleared OTC derivative contracts by replacing the UK counterparty with an EU counterparty. However, by doing this, they may trigger the clearing obligation for these contracts, therefore facing costs that were not accounted for when the contract was originally entered into.

Limited exemption from the clearing obligation to facilitate novations

The draft RTS allows UK counterparties to be replaced with EU ones without triggering the clearing obligation. This limited exemption would ensure a level playing field between EU counterparties and the preservation of the regulatory and economic conditions under which the contracts were originally entered into.

The window for the novation of non-centrally cleared OTC derivative contracts which fall under the scope of this amending regulation would be open for twelve months following the withdrawal of the UK from the EU. Counterparties can however start repapering their contracts ahead of the application date, making the novation conditional upon a no-deal Brexit, given the conditional application date of this amending regulation.

Steven Maijoor, Chair, said:

“ESMA and other EU authorities and institutions have been clear on the importance for market participants to be prepared for Brexit, including the possibility of a no-deal scenario. The proposed regulatory change supports counterparties’ Brexit preparations and maintain a level playing field between EU counterparties, while addressing potential risks to orderly markets and financial stability.

“Counterparties should negotiate as soon as possible the novations of their transactions which are in the scope of this amending regulation, given the twelve month timeframe to benefit from it.”

Third country regimes

ESMA is aware of the varying third country regimes across Member States and the impact it has on the provisions of services related to OTC derivative life cycle events, and has already highlighted its concerns in this respect. Market participants will need to take these varying regimes into account in their no-deal contingency plans regarding non-centrally cleared OTC derivatives. Given the limited effectiveness of supervisory convergence in the absence of a common legal basis, ESMA is proposing to reduce legal uncertainty by acting in relation to the clearing obligation.

Next steps

The draft RTS have been submitted to the European Commission for endorsement, and they are subject to the scrutiny of the European Parliament and of the Council.

Further developments on risk-mitigation techniques

ESMA, together with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) is currently considering a similar approach to facilitate the novation of legacy contracts to EU counterparties considering that novation may also trigger the application of bilateral margin requirements.

As regards non-centrally cleared OTC derivative contracts, the above mentioned measures will be the only regulatory measures the ESAs intend to propose to help address the legal uncertainty raised by the withdrawal of the UK from the EU and to ensure a level-playing field between EU counterparties.

[Universal Service Directive: Commission refers Portugal to the Court](#)

To balance the costs for the provision of universal service, which are not always profitable, Member States may introduce mechanisms to compensate them. The Portuguese authorities have imposed an obligation on telecom service providers to compensate the net costs of all universal services provided from 2007 onwards by the universal service provider. Portugal only did so in 2012, using a possibility provided by the Electronic Communication Law (No 5/2004), by enacting a new law which establishes an extraordinary contribution.

Contrary to EU law, Portuguese authorities are asking operators to make an extraordinary contribution in 3 consecutive years for the financing of the net cost of the universal service incurred in the past. This is not in line with the requirements of transparency, non-discrimination and least market distortion established by the Universal Service Directive ([Directive 2002/22/EC](#)) in force in the EU since 2002 (Article 13 and Annex IV, Part B). The Commission is now calling on the Court of Justice of the EU to confirm that the extraordinary compensation infringes this Directive.

The Commission opened the infringement proceedings against Portugal in February 2015 and sent a reasoned opinion in [April 2016](#). Since Portugal has not complied yet with EU law, the Commission has decided to refer this case to the Court of Justice of the EU.

Background

According to the [2002 Universal Service Directive \(Directive 2002/22/EC\)](#), Member States must ensure that a set of minimum electronic communications services of a specified quality and at an affordable price are available to all users in their territory, regardless of their geographical location. At the same time, the Directive also makes sure that those users who request a connection at a fixed location to the public communications network (i.e. electronic communications services available to the public, such as telephone and functional internet access) at a given place are provided with one. Member States may designate a universal service provider for that purpose.

To offset the net costs that designated providers incur as a result of providing a universal service (which is not always profitable), Member States

may introduce mechanisms to compensate the net cost for the provision of these services. Such mechanisms may provide for compensation either from public funds or by sharing the net cost between providers of electronic communications.

Articles 13(3) and Annex IV, Part B of the Universal Service Directive, concerning the financing of the universal service obligation, provides that if a Member State decides that providers of electronic communications networks must share the net cost of universal service obligations, this sharing mechanism shall respect the principles of transparency, least market distortion, non-discrimination and proportionality.

For More Information

- The 2002 Universal Service Directive ([Directive 2002/22/EC](#))
- On the key decisions in the November 2018 infringements package, see full [MEMO/18/6247](#).
- On the general infringements procedure, see [MEMO/12/12](#).
- On the [EU infringements procedure](#).

[Directive on markets in financial instruments \(MiFID II\): Commission suspends referral of Spain to the Court](#)

[On 19 July 2018](#), the European Commission decided to refer Spain to the Court of Justice of the EU for failure to adopt the national measures necessary to fully transpose the revised markets in financial instruments directive ([MiFID II](#)), as well as its supplementing directive ([Commission Delegated Directive \(EU\) 2017/593](#)). At the time, Spain had only notified partial transposition of the above-mentioned directives into national law.

On 1 October 2018, Spain notified a Royal Decree Law transposing most of the missing provisions. The transposition of a few provisions still needs to be completed by a Royal decree, which is planned for adoption by end of November.

Therefore, the Commission considers that the execution of the referral of Spain should be put on hold.

If the measures planned for adoption by end of November are not adopted as

planned, the stay of the proceeding may be reconsidered.

Background

In September 2017, the European Commission formally requested several Member States to transpose MiFID II (Directive 2014/65/EU), its amending directive ([Directive \(EU\) 2016/1034](#)) as well as delegated directive ([Directive \(EU\) 2017/593](#)). Then, in [January 2018](#), reasoned opinions were issued against those Member States that had not notified full transposition at the time.

These rules are crucial building blocks for the proper functioning of securities markets and are essential for the continued operation of the European single market. If Member States do not transpose the rules, investors are not able to benefit from the enhanced investor protection provided under MiFID II.

National competent authorities of non-transposing Member States are further not able to deliver legally sound authorisations for activities that had not been previously regulated, or that were regulated differently under MiFID I. This includes the operation of trading venues, such as regulated markets, multilateral trading facilities (MTF) and organised trading facilities (OTF) and the registration of MiFID I investment firms as a systematic internaliser. Not fully transposing these EU rules disrupts the single market as they became applicable on 3 January 2018 and complement the provisions of the Market for Financial Instruments Regulation ([MiFIR](#)). Cross-border “passporting” of various investment services and activities might not operate as smoothly as between Member States that have fully transposed the MiFID II rulebook.

For More Information

- On the key decisions in the November 2018 infringements package, see full [MEMO/18/6247](#).
- On the general infringements procedure, see [MEMO/12/12](#).
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