

1 October 2018

JC 2018 55

**Mr Olivier Guersent**  
**Director General**  
**DG FISMA**  
**European Commission**  
**1049 Brussels Belgium**

**Subject: ESA response to Commission request to develop guidance on facilitating the production and distribution of information on investment funds as of 1 January 2020**

Dear Mr Guersent,

Thank you for your letter dated 10 August 2018, providing further clarification to your previous letter of 6th July in view of the meeting of the Joint Committee of 18 July.

Despite the further explanations that you have provided we are still of the view, as expressed during the Joint Committee meeting, that an approach whereby retail investors will receive both PRIIPs key information documents (hereinafter PRIIPs KID) and UCITS key investor information documents (hereinafter UCITS KIID) as of 1 January 2020, is not satisfactory and risks undermining the aims of the PRIIPs Regulation 1286/2014.

As recognised in the PRIIPs Regulation, unless the information provided on PRIIPs is short and concise there is a risk that retail investors will not use it. Nevertheless, it is proposed that from 1 January 2020 retail investors would be provided with duplicate disclosures both of which aim to inform them about the key or essential elements of a product, as well as additional explanations, potentially via an additional disclosure document. These overlapping disclosure documents could in fact deter investors from using them rather than facilitating informed investment decision making.

Furthermore, we are not convinced that, from the perspective of the retail investor, the UCITS KIID information can be effectively articulated together with the PRIIPs KID information. These documents may not provide consistent information due to technical differences in the methodologies underpinning the presentation of risks, performance and costs. We are doubtful that guidance can allow many retail investors to appreciate the differences in this information, in particular bearing in mind the need to avoid financial jargon and terminology which is not immediately clear to retail investors. To take the example of the risk indicators; the PRIIPs summary risk indicator and the UCITS synthetic risk reward indicator will result in different risk indicators for a material number of PRIIPs.

The ESAs are, therefore, of the view that other solutions are needed including legislative changes to avoid a situation where there are duplicate information requirements from 1 January 2020. Furthermore, we believe that a targeted review of the PRIIPs Commission Delegated Regulation 2017/653 is also relevant to support those solutions in order for issues that have arisen from the practical application of detailed technical requirements to be addressed in the short to medium term, potentially prior to an overall review to address all of the elements set out in Article 33 of the PRIIPs

Regulation. In doing so the ESAs are also mindful of their obligation in Article 29(1)(d) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) no 1095/2010 to review the application of regulatory technical standards adopted by the Commission.

The ESAs would initiate such a process immediately and would intend to conclude this review as soon as possible, and well before the end of 2019, taking into account the time needed for the co-legislators to scrutinise any amendments. We aim to submit proposed amendments to you in Q1 of 2019.

During this process, the ESAs will engage with stakeholders including via a public consultation to be launched in Q4 of this year, in order to collect feedback on the most high priority issues, as well as on the specific amendments proposed. Based on the evidence gathered so far following the implementation of the PRIIPs KID, the ESAs expect to examine the following issues:

- Performance scenarios: it is intended to focus on the methodology underpinning the scenarios and their presentation, including the narratives descriptions. In doing so the ESAs would take into account the views expressed by a range of different stakeholders as to whether the scenarios are providing reasonable expectations as to possible future returns. We previously highlighted the relevance of reviewing the current approach in our capacity as ESAs' Chairs in our Letter of 22 December 2016 in the context of the finalisation of the regulatory technical standards under Articles 8(5), 10(2) and 13(5) of the PRIIPs Regulation.
- Other specific changes including in view of ESA Q&A: consideration will be given to the need for other targeted amendments, in particular taking into account where issues have been addressed in Q&A published by the ESAs.

The ESAs remain available to discuss further our views on these topics and the intended next steps with you.

Yours sincerely,



Steven Maijoor  
Chair, ESMA



Andrea Enria  
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