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European Fund and Asset Management Association

The PRIIP KID Regulation must be delayed to allow for proper implementation

EFAMA is supportive of the general objectives of the PRIIP KID Regulation. We are however concerned about the very limited time that product manufacturers will have between the final technical rules (RTS) and essential guidelines being published and the deadline to produce Key Information Documents (KIDs) from 31 December 2016 onwards. Having provided extensive feedback throughout the ongoing Level-2 work, we seriously doubt there will be enough time for market participants to implement the final rules by the end of this year, as originally foreseen by the co-legislators.

EFAMA therefore recommends that the European Commission, European Parliament and Council delay the entry of application of the PRIIP KID Regulation by at least one calendar year.

Development of technical standards for the PRIIPs KID has turned out to be a complex project involving several iterations of highly technical consultations. A number of fundamental questions still remain unanswered at this late stage, while others possibly require additional guidance at Level-3. In the best-case scenario, the final RTS will be published in the EU Official Journal in Q3 2016, leaving only a few months for the industry to create a huge number of KIDs.

Our experience with the UCITS KIID showed that one calendar year was clearly needed after the finalisation of the technical standards. We highlight below three key deliverables to underline the intricacies from a project management perspective:

- Building and testing the relevant IT build to produce the KIIDs to ensure that the data produced was accurate and was not error free. As this process was new and relied on a number of different data sources, several rounds of testing and review were typically needed before the KIID was in a state where UCITS and their management companies were able to sign off the final document. We expect the same need for testing and quality control in the PRIIPs KID,

- Drafting the statement of objectives in plain language involved consumer testing and consequential changes to fund documentation for consistency. Without a standard lexicon of key terms, all manufacturers had to develop their own glossaries and then test that changes to pre-existing wording faithfully represented investment strategies
- Working with distributors, execution-only platforms and fund data repositories to ensure they understood their respective duties (e.g. pre or post sale provision) and to test the mechanics of onward provision of KIIDs to end-investors. This process took a number of months, in particular as experience showed that there was widespread misunderstanding of the role of the KIID.

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If insufficient time is provided to surmount these key operational challenges, PRIIP manufacturers will be unable to provide a PRIIP KID to retail investors, and they may face serious legal risks that will result in a de-facto ban on distribution of any type of PRIIPs from 01 January 2017.

The lack of time for the ESAs explains the, in places, conflicting and contradicting draft technical rules (e.g. on the calculation of risk), the introduction of completely new concepts at this late stage (e.g. arrival price for the calculation of transactions costs) and the unrealistic attempt to solve these many highly technical elements in the draft RTS. The last point is most apparent when comparing the current proposal to the existing UCITS KIID rules, which provide a more general framework at Level-2, but subsequently identify technical details through Level-3 guidelines and Level-4 Q&As. The impending coming-into-force of the Regulation may be why the ESAs do not feel able to follow this tried and tested model, as any provisions included in Level-3 guidelines would require further public consultation and thus risk derailing the finalisation of the overall framework. We request that most methodologies as defined in annexes of the draft RTS need further clarification.

As it stands from a technical perspective, the below are some of the questions that are still unanswered and thus in urgent need of further adaptations and clarification:

- Calculation of transaction costs: The inclusion of market impact is at odds with MiFID II, as the latter clearly and explicitly excludes market impact from its definition of costs. Also, the proposed methodology for calculation of transaction costs would require an extensive retrospective data collection exercise to calculate the past three-year average figures. Moreover, the methodology does not work for fixed-income transactions due to the lack of the relevant market data. MiFID II might partly remedy this situation in the longer term due to the new requirements for pre-trade transparency for some of the most liquid fixed-income instruments. However, with the likely postponement of MiFID II entry into force, it is clear that the data will not become available in time for the implementation of the PRIIPs KID requirements.

- Lengthy and complex work still needed for the SRI methodologies: The computation methodology, especially in terms of the MRM, is still under complex and lengthy technical discussion. Hence, further debates, technical analyses and practical testing of the approaches are necessary in order to ensure a sound solution that meets the Level 1 expectations of real comparability among PRIIPs. Such continued work will be hardly possible under the current tight timeline of PRIIPs implementation.

- KIDs for multi-option products: While being formally exempted by the Level-1 Regulation, fund management companies might be required to provide “PRIIPs-like” information well before the current implementation deadline. This is because, according to current drafting of the RTS, information has to be provided to manufacturers of so-called “multi-option products” (such as unit-linked insurance contracts offered by insurance companies), creating the perverse effect that fund managers – while being explicitly exempted by the Regulation – will be amongst the first caught by the obligation to provide PRIIPs-compliant data.

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