



22 December 2016

ESAs 2016 81

Mr. Oliver Guersent  
Director General  
European Commission  
DG FISMA  
Rue de Spa 2  
B - 1000 Brussels  
Belgium

**Subject: ESAs' response to the intention of the European Commission to amend the draft Regulatory Technical Standards (RTS) jointly submitted by EBA, ESMA and EIOPA under Articles 8(5), 10(2) and 13(5) of Regulation (EU) No 1286/2014**

Dear Mr Guersent,

On 6 April 2016, the European Supervisory Authorities (ESAs) submitted to the European Commission for endorsement draft Regulatory Technical Standards (RTS) on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs) under Regulation (EU) No 1286/2014 of the European Parliament and of the Council.

The European Commission endorsed the draft RTS on 30 June 2016 but during the following scrutiny period, while the Council raised no objections, on 14 September 2016 the European Parliament rejected them. In order to address the concerns expressed by the European Parliament, the Commission set out its intention to amend the RTS. In accordance with the procedure in the ESAs' founding Regulations, the ESAs were informed about the Commission's intention to amend the draft RTS by its letter received on [10 November 2016](#).

The ESAs discussed the amendments to the draft RTS received from the European Commission and presented an Opinion to the three Boards of Supervisors covering all of the areas addressed by the Commission's letter and the amendments in the RTS. The Opinion was adopted at the EBA and ESMA Boards on the basis of qualified majority voting. However, it did not receive the support of a qualified majority of the EIOPA Board as there were differing views expressed in particular concerning the treatment of multi-option products, the criteria to determine whether a comprehension alert should be included in a KID, and the provisions in the RTS on the credit risk mitigation factors for insurers. As a result, the three ESAs are not in a position to provide an agreed opinion on the amended draft RTS.

---

Nevertheless, since there was a general consensus during the discussions within the ESAs' Boards that the amendments to the performance scenarios proposed by the Commission raised comprehension issues and may be misleading, we would like to convey the main concerns raised on this topic in our capacity as ESAs' Chairs.

Whilst the performance scenarios should not provide overly positive expectations as to future returns, concerns were raised regarding the credibility of the 'moderate' scenario if it is either zero or, once costs are taken into account, indicates an expectation of losses over the whole recommended holding period. The ESAs selected an approach in the original draft RTS using historic returns over a five-year period to allow for performance of asset classes, costs and product features to be readily reflected. Though discussions within the ESAs showed that there was recognition that there are pros and cons to this approach also, the methodology in the ESAs' original draft RTS was still considered to be preferable. If the Commission nevertheless wishes to amend the RTS along the lines it has proposed, one option the ESAs considered was the use of the mean of the distribution of risk free returns, adjusted for dividend yields. However, as *inter alia* this approach would not discriminate between different asset classes, and given the review of Regulation (EU) No 1286/2014 due by 31 December 2018, it was considered important for alternative approaches to be investigated as part of that review process.

The ESAs remain at your disposal to work further on amendments to the RTS, or to provide any further clarification.

Yours sincerely,

*signed*

Gabriel Bernardino  
Chair, EIOPA

Andrea Enria  
Chairperson, EBA

Steven Maijoor  
Chair, ESMA