

A. Question about Articles 82 and 82a of Directive 2009/65/EC

Question 1 (FISMA/2868)

ESA	JC
Question ID	FISMA/2868
Status	Submitted
Legal act	Directive 2009/65/EC
Topic	UCITS quick fixes and pre-notification of UCITS KID PRIIPS
Article	Articles 82 and 82a of Directive 2009/65/EC
Paragraph	
Subparagraph	
COM Delegated or Implementing Acts/RTS/ITS/GLs	
Article/Paragraph	
Question	<p>“While currently UCITS (or their management companies) send their KIID to the home competent authority of the UCITS, it is unclear whether the reading of Articles 82 and 82a of Directive 2009/65/EC implies that from 1 January 2023:</p> <p>a) UCITS (or their management companies) shall send the PRIIPs KID (instead of the UCITS KIID) to the home competent authority of the UCITS (as per Article 82 of Directive 2009/65/EC); or</p> <p>b) Whether Article 82 of Directive 2009/65/EC would no longer apply, and UCITS (or their management companies) would not need to send their PRIIPs KID to any competent authority, except in those Member States where the <i>ex-ante</i> notification option, allowed by Regulation (EU) No 1286/2014 of the European Parliament and of the Council¹, has been implemented. And in that case, the notification would need to be made to the competent authority of the Member States where it is going to be marketed (host NCA). “</p>
Answer	<p>The correct reading is as set out in point (a): <i>UCITS (or their management companies) shall send the PRIIPs KID (instead of the UCITS KIID) to the home competent authority</i></p>

¹ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

	<p>of the UCITS (as per Article 82 of Directive 2009/65/EC).</p> <p>Explanation: According to recital 7 of Directive (EU) 2021/2261 of the European Parliament and of the Council,² which introduced Article 82a in Directive 2009/65/EC, “<i>The key investor information and the KID cover essentially the same <u>information requirements</u>. It is therefore necessary to ensure that retail investors in PRIIPs interested in acquiring units of UCITS do not receive, from 1 January 2023, both documents for the same financial product.</i>” The new Article 82a of Directive 2009/65/EC therefore provides that the key information document (“PRIIPS KID”) drawn up, provided, revised and translated by a management company for a UCITS pursuant to Regulation (EU) No 1286/2014 is considered to “<i>satisfy the requirements applicable to key investor information set out in Articles 78 to 82 and Article 94 of this Directive.</i>” Therefore, the PRIIPS KID replaces the UCITS KIID for the purposes of Directive 2009/65/EC and Articles 78 to 82 and Article 94 of Directive 2009/65/EC, relating to the drawing up, the content, the translation, the updating of key information are considered to be satisfied in the presence of a PRIIPS KID. The notification requirement to home NCAs under Article 82 of Directive 2009/65/EC still applies, but the UCITS KIID is replaced by the PRIIPs KID for the satisfaction of that requirement.</p>
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² Directive (EU) 2021/2261 of the European Parliament and of the Council of 15 December 2021 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) (OJ L 455, 20.12.2021, p. 15).