

PRIIPs Regulation

Reference Text: Regulation on key information documents for **Packaged Retail and Insurance-based Investment Products**

Link : <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1286&from=EN>

Presentation

On 3 July 2012 the Commission adopted a proposal for a regulation for a new Key Information Document (KID) to be produced by investment product manufacturers and provided to retail customers when they are considering buying investment products. It aims to enable retail investors to understand and compare the key features and risks of the PRIIPs.

The PRIIPs Regulation applies to the manufacturers and persons advising on or selling.

Targeted products:

- **Packaged retail investment product** means an investment where, regardless of the legal form of the investment, the amount repayable to the investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the investor.
- **Insurance-based investment product** means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations.
- **Exemptions:** non-life insurance products, life insurance contracts where the benefits provided by the contract are payable only in the event of death or disability due to an accident, illness or disability, deposits other than structured deposits and securities, officially recognised pension schemes, retirement products recognised by national law as having the primary objective of providing the investor with income in retirement, individual retirement products for which an employer's financial contribution is required.

Drawing up the KID: before placing a retail investment product on the market, the investment product manufacturer shall draw up a KID and publish this document on its website. Member States may require the initiator to notify the document in advance to the competent national authority.

Form and content of the KID: before a binding agreement is made, the retail investor shall receive a KID of a maximum of three A4 pages allowing them to take an informed decision and to compare retail investment products as well as insurance products.

The KID shall be accurate, fair, clear and not misleading. It shall be a **stand-alone document, clearly separate from marketing materials**, and be compatible with any binding contractual document.

Information to be included (among other):

- the **name** and address of the initiator, information relating to the relevant national authority and the date of the document
- a notification of specific **environmental or social outcomes** targeted by the investment product, as well as the way in which performance is measured
- a description of the **types of investors** for whom the investment product is intended, especially in terms of risk appetite and investment horizon
- a brief description of the **risk and reward profile** of the investment product, including for example, the maximum possible loss of invested capital

- a brief description outlining, in the event of the initiator being unable to make the payments covered, whether the investment product is covered by a compensation scheme
- the required minimum holding period and cashing in early
- information about how and to whom a client can make a claim

Complex products: some of the investment products covered by the scope of the regulation are not simple and may be difficult for investors to understand. This is why Parliament has ensured that investors receive, when necessary, the following notice, “**You are about to purchase a product that is not simple and which may be difficult to understand**”.

Responsibility in the case of losses: : the text foresees that if a retail investor shows that they suffered a loss through the use of the KID by investing in the retail investment product for which the KID was produced, this retail investor can **seek redress** from the initiator of the investment product for this loss, under the provisions of national law.

Complaints: the retail investors shall have an effective way of submitting a complaint against the initiator of an investment product based on insurance. Effective redress procedures shall also be available to retail investors in the event of cross-border disputes.

Penalties: the competent authorities designated by the Member States shall have the power to impose penalties such as the suspension or prohibition of the sale of a product, by publishing a public notice and imposing administrative fines of at least **EUR 5 000 000 or at least 3% of annual turnover** in the case of a moral person or a maximum amount of at least **EUR 700 000** for individuals.

Application to UCITS/AIF: according to the Regulation Level 1, **the funds that already produce a KIID UCITS have an exemption period until 31 December 2019** to produce the KID PRIIPS.

According to the first project of Regulatory Technical Standards (RTS or Level 2 measures) published by the Commission on 7 April 2016, the transitional period for UCITS/AIF would not apply for funds that have an underlying investment option of a unit-linked insurance product. Those funds would need to be ready for PRIIPS from the coming-into-force date. This item has been modified in the amended version of the RTS published on 8 March 2017 by the Commission.

Previous steps:

- 20/12/2012: Publication of P. Bérès draft report (European Parliament)
- 24/06/2013: Adoption by the Council of its general approach
- 21/10/2013: Vote in ECON
- 21/11/2013: Partial vote in plenary
- 29/01/2014: 1st Trilogue and 20/3/2014: Last Trilogue
- 15/04/2014: Adoption by the European Parliament
- 30/07/2014: European Commission mandate sent to EIOPA for advice on possible delegated acts
- 10/11/2014: Formal adoption by ECOFIN
- 27/11/2014: The Joint Committee of the three European Supervisory Authorities, the ESAs (EBA, ESMA and EIOPA) published a Discussion Paper that focuses on the different sections of the KID such as “what are the risks?” and “what are the costs?” (answer on 17/02/2015).

- 9/12/2014: Publication in the Official Journal of the European Union, the "OJ" (application period: 24 months, so initially 31 December 2016)
- 23/06/2015: Release of a Technical Discussion Paper on Article 8-5 (risks, performance and costs) on some RTS such as calculation method of risk indicator and costs borne by the investors.
- 11/11/2015: The ESAs published a Joint Consultation Paper related to the content and the presentation of the KID PRIIPS (answer on 29/01/2016)
- 07/04/2016: the ESAs published the level 2 measures dated 31 March 2016 : "Final draft regulatory technical standards with regard to presentation, content, review and provision of the key information document, including the methodologies underpinning the risk, reward and costs information. », proposals in relation to the presentation and content of the KID (risk indicators, costs), revision of the KID, timing of publication of the KID.
- 30/06/2016: The European Commission has adopted the RTS. The press release said that the European Parliament and the Council have a two-month scrutiny period, which they can extend for a further month.
- 01/09/2016: The European Parliament's economic and monetary affairs committee, known as ECON, voted in favor of rejecting the PRIIPs RTS.
- 14/09/2016: The European Parliament voted also in favor of rejecting the PRIIPs RTS.
- 09/11/2016: European Commission has proposed one-year-delay to PRIIPs implementation. PRIIPs will be applicable as from 1 January 2018 according to this proposal. As Level 1 of PRIIPs regulation was modified, this proposal had to be formally adopted by the European Parliament and then by the Council. The Parliament voted on 01/12/2016 in favor of this proposal and the Council did the same on 08/12/2016.
- 10/11/2016: The European Commission submitted amendments to the ESAs for comment. Those amendments were notably related to Multi-option PRIIPs, performance scenarios and comprehension alert.
- 22/12/2016: The ESAs wrote a letter to the Director General for financial stability of the European Commission to reject the proposed amendments. The ESAs explained that the amendments relating to how performance scenarios will be presented in the KID "raise comprehension issues and may be misleading". The ESAs said they were nevertheless ready to work further on these amendments.
- 23/12/2016: The postponement of PRIIPS application date to 01/01/2018 was published on the Official Journal of EU.
- 08/03/2017 : Publication by the European Commission of revised RTS (Regulatory Technical Standards) supplementing the PRIIPs Regulation. Those new RTS replace the previous ones published on 30/06/2016 and rejected by the European Parliament on 14/09/2016.

The revised RTS main amendments concern:

- **Performance scenarios:**

The KIDs PRIIPs now contains a fourth scenario, so-called "**stress scenario**" along with the favourable, moderate and unfavourable scenarios that were already included in the previous version of the RTS. This stress scenario shows what an investor may get back in extreme market circumstances.

- **Multi-option products:**

The treatment of multi-option PRIIPs has been clarified. According to the new RTS, PRIIPs manufacturers will have **the option** to use the UCITS KIIDs to provide specific information related to underlying investment options for MOPs until 31 December 2019. However this exemption remains partial as additional information will have to be provided to insurers in the scope of MOPs.

- **Comprehension alert:**

The comprehension alerts have been aligned with MIFID II and IDD (Insurance Distribution Directive) complexity definitions.

-29/03/2017: The European Parliament and the Council published press releases to inform that that they will not object the new RTS published on 08/03/2017.

-12/04/2017: Publication in the Official Journal of EU of the Delegated Regulation (UE) 2017/653.

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0653&from=EN>

-07/07/2017: the European Commission published a Communication providing “Guidelines” on the application of the Level 1 of PRIIPs Regulation. They do not contain new legal rule but seeks to further facilitate the implementation of PRIIPs.

http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.C_.2017.218.01.0011.01.FRA&toc=OJ:C:2017:218:TOC

The “Guidelines” cover topics such as:

- definition of PRIIPs manufacturer
- products covered by the PRIIPs Regulation
- products made available to retail investors
- multi-option PRIIPs (MOP)
- territorial application
- competent authority
- translations of key investor information documents (KIDs)

-18/07/2017: ESAs updated its Q&A on the PRIIPS KID, initially published on 04/07/2017 (level 3 measures)

https://esas-joint-committee.europa.eu/Publications/Technical%20Standards/JC%202017%2049%20%28JC_PRIIPs_QA_Final%29.pdf

and a Flow Diagram for the calculation related to the Summary Risk Indicator and the Performance Scenarios was also published

https://esas-joint-committee.europa.eu/Publications/Technical%20Standards/JC%202017%2049%20%28PRIIPs_flow_diagram_risk_reward%29.pdf

The Q&A covers notably the following items:

- General topics
- market risk assessment
- methodology for assessing credit risk
- summary Risk Indicator
- performance Scenarios
- derivatives
- methodology for the calculation of costs

Next step:

- Entry into force of the regulation from 03/01/2018

SGSS/SMI contact: Marie - Claire de Saint - Exupéry (marie-claire.de-saint-exupery@socgen.com)