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PRIIPs Regulation

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EU Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (“PRIIPs”), commonly referred to as the PRIIPs Regulation, introduced a pan-European pre-contractual product disclosure document, the key information document (“KID”). This PRIIPs Regulation imposes obligations on entities that manufacture, advise on, or sell PRIIPs to retail investors in the European Economic Area (“EEA”). The main purpose of this Regulation is to require PRIIP manufacturers (such as a fund manager in the case of an investment fund) to prepare a KID to accompany all PRIIPs that are made available to retail investors in the EEA and PRIIP distributors to provide the KID to retail investors. The KID disclosure requirements are designed to strengthen investor protection by enabling retail investors to compare products and take more informed investment decisions.

The PRIIPs Regulation is supplemented by Level 2 and 3 EU measures, these being: Commission Delegated Regulation 2017/653 (the “PRIIP KID Delegated Regulation”) and the Joint Committee’s Questions and Answers on the PRIIPs KID. They are both intended to promote common supervisory approaches and practices in the implementation of the KID.

Which investment funds must prepare a KID?

All investment funds (AIFs, PIFs, NAIFs, UCITS funds) are PRIIPs as the term is defined under the PRIIPs Regulation but not all manufacturers and distributors of investment funds need to prepare or distribute a PRIIP KID to investors. A PRIIP KID is only required when an investment fund is made available to retail investors within the EEA.

Retail investors are described in the PRIIPs Regulation as any ‘Retail Client’ as defined under MiFID II (that is, any non-professional client), excluding non-EEA retail investors. From a local regulatory standpoint, fund manufacturers and distributors should be particularly careful when they make available or distribute an investment fund to “Qualifying Investors” (as defined under the applicable MFSA Rules). While professional clients fall under the definition of ‘Qualifying Investor’, the definition of ‘Qualifying Investors’ is wider and includes investors who are not necessarily professional clients. Therefore, for example, a Maltese Professional Investor Fund targeting Qualifying Investors may fall within the scope of the PRIIPs Regulation if it is made available to non-professional clients within the EEA. In such case, a PRIIP KID will have to be prepared and provided to the retail investor in question in line with the applicable provisions of the PRIIPs Regulation.

UCITS management companies and persons advising on or selling UCITS funds are currently exempt from the provisions of the PRIIPs Regulation. Until this exemption expires, UCITS will continue to prepare a Key Investor Information Document (“UCITS KIID”) as required by the UCITS Directive.

Current status, key dates and next steps

The PRIIPs Regulation, which had entered into force on 1 January 2018, continues to be applicable to non-UCITS funds that fall within its scope, and it currently exempts UCITS funds from the PRIIP KID requirements by means of a transitory provision which had to expire at the end of this year.

On 23 November 2021, the European Parliament voted to adopt a proposed Regulation amending the PRIIPs Regulation as regards the extension of the transitional arrangement for certain persons advising on or selling UCITS and a proposed Directive amending the UCITS Directive as regards the use of key information documents by UCITS’ management companies. The proposed Regulation and Directive were formally approved by the European Council and published in the EU’s Official Journal on 20 December, 2021.

Regulation 2021/2259

Article 32 of the current PRIIPs Regulation provides for a transitional arrangement for UCITS management companies and for persons advising on or selling units of UCITS, exempting them from the PRIIP KID requirements until 31 December 2021. Under the [final adopted text](#), the Article 32 transitional arrangement has been extended until **31 December 2022**. The aim of this is to give the industry a longer period to implement the amendments to the PRIIP KID Delegated Regulation.

Directive 2021/2259

In July 2021, the European Commission adopted a legislative proposal for a Directive amending the UCITS Directive specifying that where a KID is produced for a UCITS under the PRIIPs Regulation, it should be considered as satisfying the requirements applicable to key investor information for the purposes of the UCITS Directive. Under the [final adopted text](#), the quick fixes to the UCITS Directive will apply as of **1 January 2023**. These technical amendments will help avoid duplicative pre-contractual information requirements relating to KIDs and KIIDs. Member States are required to adopt and publish the measures necessary to comply with the amending Directive by **30 June 2022** and to apply those measures from **1 July 2022**.

The recitals of the Regulation specify that the European Commission should produce a report as a matter of urgency addressing problems in the PRIIPs Regulation. These problems include the need for a clearer definition of retail investors, the product scope of the Regulation, the elimination of paper as the default option where a PRIIP is offered on a face-to-face basis, the concept of "successive transactions", and the provision of pre-contractual information to professional investors.

Key takeaways

- PRIIP manufacturers that currently have the ability to sell their investment fund to non-professional investors but wish to remain outside the scope of the PRIIPs Regulation, should limit the distribution and sale of the fund to professional clients or non-EEA investors only.
- Investment funds that currently have EEA retail investors or that intend to make units of their offerings available to non-professional investors (except for UCITS funds) should ensure that a PRIIPs KID is made available to those investors.
- UCITS management companies and UCITS distributors will have to comply with the PRIIPs KID requirements as of **1 January 2023** and when a PRIIPs KID is produced for a UCITS, no UCITS KID will be required.



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