

The PRIIPs KID Regime

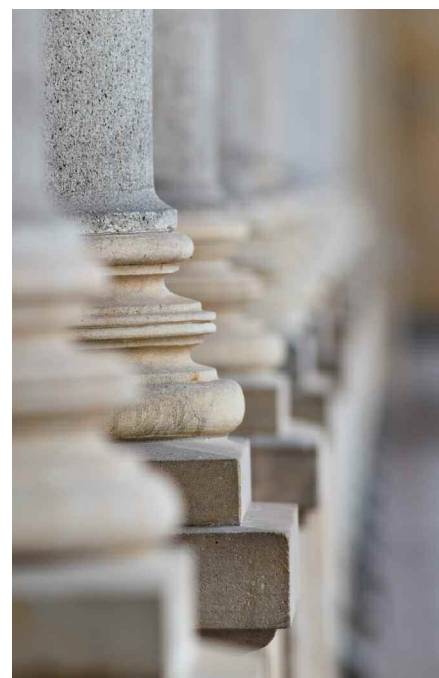
From 31 December 2016, manufacturers and distributors of packaged retail and insurance-based investment products (PRIIPs) will have to comply with the Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products¹ – the PRIIPs KID Regulation – which came into force in all EU member states on 29 December 2014.

The PRIIPs KID Regulation obliges manufacturers of PRIIPs, such as fund managers, insurance companies, credit institutions and investment firms, to produce a clear, concise document – the Key Information Document or KID – where such products are targeted at retail investors, and sets out rules for the content and format of the KID, as well as for its review and the timing for delivery. In addition, “any person advising on or selling a PRIIP”, which may be the PRIIP manufacturer itself for direct sales, or distributors and intermediaries for indirect sales, also has to comply with the PRIIPs KID regime.

The rationale behind the PRIIPs KID Regulation is to create uniform rules across the EU on the format and content of the KID, and on how it must be

provided to retail customers, in order to increase investor protection and create a level playing field across the wide spectrum of products that are offered to the public. It is thought that such uniformity will make it easier for retail investors to understand and compare different PRIIPs, and to make a more informed decision on whether an investment product is appropriate for them or not. For these reasons, the PRIIPs KID regime will be implemented by means of a regulation, directly applicable in all EU member states, without the need for national transposition.

This briefing summarises the key features of the PRIIPs KID regime and anticipates some of the issues likely to arise as the Level 2 process unfolds.



What you need to know on PRIIPs

- Compliance with the PRIIPs KID regime required by 31 December 2016 with an exemption period for UCITS until 31 December 2019
- PRIIPs include investment funds, life insurance policies with an investment element, structured products and structured deposits
- Manufacturers and re-manufacturers of PRIIPs (including fund managers, insurance companies, banks and investment firms) must produce a KID for each product aimed at retail investors
- The form and content of the KID must comply with the requirements set out in the PRIIPs KID Regulation and the RTS (once published)
- Manufacturers must review the KID regularly
- Manufacturers and distributors who are advising on or selling PRIIPs must provide the KID to retail investors, free of charge, before contract, unless certain specified conditions apply
- ESAs to have market monitoring and product intervention powers
- Complaints and redress procedures and provision on penalties and sanctions form part of the regime
- Detailed Level 2 measures to be issued, following further consultations during 2015

¹ Regulation (EU) No 1286/2014 of 26 November 2014.

Key features of the PRIIPs KID regime

Products in scope

The PRIIPs KID Regulation applies to “PRIIPs” – packaged retail and insurance-based investment products. Establishing whether a particular investment product is a PRIIP can be difficult, as there is no defined list of PRIIPs in the Regulation. Instead, PRIIPs are any product that falls within the following definitions:

- “packaged retail investment product” or “PRIIP”, which are investments, including instruments issued by SPVs, (as such term is defined in the Regulation), where the amount repayable to the retail 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 retail investor; and
- “insurance-based investment product”, which are insurance products, which offer a maturity or surrender value which is wholly or partially exposed, directly or indirectly, to market fluctuations.

In practice, PRIIPs can take a variety of legal forms, but are distinguished by certain features, such as: they typically combine exposures to multiple underlying assets; they are designed to deliver capital accumulation over a medium to long-term investment period and they entail a degree of investment risk, although some provide capital guarantees. Financial instruments issued by SPVs that conform to the definition of a PRIIP are also included. What all these investments have in common is that they are not the same as directly holding the underlying asset itself (e.g. a share or a bond). Rather the PRIIP “packages” or “wraps” together assets to create different exposures, product features or cost structures to those that

would apply to investments where the asset is held directly.

Broadly speaking, PRIIPs will include all kinds of investment funds (closed-ended and open-ended) including UCITS and AIFs, life insurance policies with an investment element, structured products (e.g. structured securities such as convertible bonds and other securities that embed a derivative) and structured deposits.

Out-of-scope products

Certain non-packaged investment products are excluded from the scope of the PRIIPs KID Regulation, such as: direct investments (corporate shares or sovereign bonds and other securities which do not embed a derivative), non-structured deposits, simple saving products that do not offer investment opportunities, and products exposed to interest rates.

As the PRIIPs KID Regulation focuses on retail investors, investment funds dedicated to institutional investors are excluded from the Regulation, as are private pension products, sometimes called “third pillar pensions”. However, it should be noted that EU member states have the right to regulate the provision of a key information document for out-of-scope products and that the European Supervisory Authorities (ESAs), comprising ESMA, EBA and EIOPA, must monitor products which are excluded from the scope of the PRIIPs KID regime and issue guidelines to address any problems which have been identified. Should this be the case, the review into the regime, which must take place by 31 December 2018, will consider the possible extension of the scope of the PRIIPs KID Regulation to other products and the elimination of certain exclusions.

Retail investors

Unlike the UCITS key investor information document (KIID), which is designed for all

investors, both retail and professional, the investors targeted by the PRIIPs KID Regulation are retail investors only.

Responsibility for preparing the KID

Every PRIIP manufacturer or re-manufacturer will be responsible for drawing up a KID for that product in accordance with the requirements laid down in the regulation and must publish it on its website. In addition, the PRIIP manufacturer should regularly review the KID and revise the document when changes need to be made.

The manufacturer or re-manufacturer is any entity that creates or issues a PRIIP, as well as any entity that makes changes to an existing PRIIP including, for example, altering its risk-reward profile or the costs associated with the investment. Typically, PRIIP manufacturers would include investment fund managers, insurers and banks.

Who is responsible for delivering the KID?

The entity responsible for delivering the KID shall be the person advising on or selling the PRIIP to a retail investor. This includes the PRIIP manufacturer itself for direct sales and the distributor and intermediary for indirect sales.

The form and content of the KID

In brief, the KID is a pre-contractual information document that must follow a common standard in relation to its structure, content and presentation in order to enable retail investors to compare different investment products and ultimately choose the product that best suits their needs. This is similar, but not identical, to the UCITS KIID.

The key features of a PRIIPs KID and how it differs from a UCITS KIID are shown in the table below.

Content and Key Features of the PRIIPs KID

Form – Stand alone document, format easy to understand, colours allowed but comprehensible when printed in black and white, brand/logo of the PRIIP manufacturer or the group to which it belongs allowed as long as not distracting for investors.

This is similar to the UCITS KIID.

Language – Plain-speaking and clearly expressed language (no jargon), in one of the official or accepted languages of the member states where the PRIIP is distributed, or in another language accepted by the competent authorities of that member state. Where it has been written in a different language, it shall be translated into one of these languages.

This is similar to the UCITS KIID.

Length – Short document written in a concise manner of a maximum of three sides of A4-sized paper when printed.

This is different to the UCITS KIID, which is limited to two A4 sized pages and three pages for structured UCITS.

Content – The KID is a standardized document, containing sections that must always be presented in the same order, and which answer the key questions retail investors will have on the PRIIP:

- *What is the product?*

Indication on the type of product, its objectives and means of achieving them, the type of retail investors to whom the PRIIP is intended to be marketed, the insurance benefits, the term of the PRIIP.

- *What are the risks and what could I get in return?*

A brief description of the risk-reward profile, including a summary risk indicator and supplementary information explaining that indicator, the possible maximum loss of invested capital, appropriate performance scenarios, conditions for returns to retail investors or built-in performance caps (if any) and the impact of tax legislation.

- *What happens if [the name of PRIIP product manufacturer] is unable to pay out?*

A brief description of whether the related loss is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not.

- *What are the costs?*

A description of the costs associated with an investment in the PRIIP, comprising both direct and indirect costs, one-off and recurring costs, with summary indicators of these costs and total aggregate costs plus an indication of other, additional costs that advisors, distributors or any other person advising on, or selling, the PRIIP will charge if they are not already included.

- *How long should I hold it and can I take money out early?*

An indication on whether there is a cooling-off period or cancellation period for the PRIIP, a required minimum holding period, the possibility to make disinvestments before maturity and the conditions that would apply if so, and information on the potential consequences of cashing in before the end of the term.

- *How can I complain?*

Information about how and to whom a retail investor can make a complaint about the product or the conduct of the PRIIP manufacturer or a person advising on, or selling, the product.

- *Other relevant information*

A brief indication of any additional information documents to be provided to the retail investor at the pre-contractual and/or the post-contractual stage, excluding any marketing material.

In addition to the above questions, the KID must also include specifically worded statements, as required by the PRIIPs KID Regulation, explaining, *inter alia*, what the KID does and does not do.

Price – Free of charge

This is similar to the UCITS KIID.

Time of delivery – In good time before the conclusion of a transaction (i.e. before the retail investor is bound by any contract or offer relating to the PRIIP), but with the possibility, subject to specific conditions, of delivering it immediately after the conclusion of a transaction if “distance communication” has been used.

This is different to the UCITS KIID, which must be delivered in good time before the subscription.

Means of delivery – Paper or, subject to specific conditions, other durable medium or website. However, where the KID is provided using a durable medium other than paper, or by means of a website, a paper copy shall be provided to retail investors upon request and free of charge.

This is similar to the UCITS KIID.

Complaints handling – Harmonisation of rules for alternative dispute resolution, but no infringement of the right to bring legal proceedings before courts.

This is not covered under the UCITS KIID regime.

Liability and complaint issues

The PRIIPs Regulation makes it clear that PRIIP manufacturers will not incur civil liability solely on the basis of the KID, including any translation of it, unless it is misleading, inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the mandatory requirements of the PRIIPs KID Regulation. In such case, a retail investor may claim damages from the PRIIP manufacturer for losses suffered in accordance with national law. For the avoidance of doubt, liability based on the KID does not exclude further civil liability claims in accordance with national law.

The PRIIP manufacturer and the person advising on or selling the PRIIP must establish appropriate procedures and arrangements for complaints handling. These must ensure that retail investors have an effective way of submitting a complaint against the PRIIP manufacturer, that complainants receive a substantive reply in a timely and proper manner, and

that effective redress procedures are available to retail investors in cross-border disputes, in particular where the PRIIP manufacturer is located in another EU member state or in a third country.

The PRIIPs KID Regulation further requires that EU member states establish administrative sanctions and measures for infringing the PRIIPs KID Regulation and to take all necessary measures to ensure that they are implemented.

Impact on regulated UCITS and non-UCITS

As the UCITS regime also has a requirement to produce a Key Investor Information Document or KIID, UCITS funds, although they technically fall within the PRIIPs definition, are granted a five year transitional period (until 31 December 2019), during which time the UCITS KIID can continue to be used.

This position is to be considered as part of the review by the EU Commission which must take place by

31 December 2018. Amongst other things, the review must assess whether the transitional arrangements should be prolonged, or whether the UCITS KIID should be considered replaced by or equivalent to the PRIIPs KID.

The five-year transitional period and review also applies in respect of non-UCITS retail funds if an EU member state applies the UCITS rules on the format and content of the KIID document to such funds. Otherwise, non-UCITS retail funds must issue a KID compliant with the PRIIPs KID Regulation requirements as from 31 December 2016.

Next steps – the Level 2 measures

Much further detail will be added to the PRIIPs KID regime in due course through Level 2 measures, as the EU Commission and ESAs are empowered under the regulation to produce certain delegated acts and regulatory technical standards (RTS). These are shown in the table below.

The PRIIPs KID Regime Level 2 Measures

Article	Measure	Deadline
8(4)	The EU Commission to adopt delegated acts specifying the procedures used to establish whether a PRIIP targets specific environmental or social objectives	30 December 2017
8(5)	The ESAs to develop draft RTS on the presentation and contents of the KID, the methodology used to determine risk-reward profiles and the calculation of costs	31 March 2016 ²
10(2)	The ESAs to develop draft RTS on the conditions for reviewing and revising the KID, including the specific conditions to apply where PRIIPs are made available in a “non-continuous manner” and the circumstances when investors are to be informed of a revised PRIIP and the means of communicating this information	31 December 2015
13(5)	The ESAs to develop draft RTS specifying the conditions for fulfilling the requirement to provide the KID	31 December 2015
16(8)	The EU Commission to adopt delegated acts specifying the criteria and factors to be taken into account by EIOPA in determining whether there is a threat to the orderly functioning and integrity of financial markets or to the stability of whole or part of the EU financial system	30 December 2017
17(7)	The EU Commission to adopt delegated acts specifying the criteria/factors to be taken into account by competent authorities in determining whether there is a significant investor protection concern, or a threat to the orderly functioning or integrity of financial markets or to the stability of the financial system in a least one member state	30 December 2017

² The PRIIPs KID Regulation states the date by which the ESAs are to draft RTS on Article 8(5) as 31 March 2015, but this was corrected to 31 March 2016 by the Corrigendum issued on 13 December 2014.



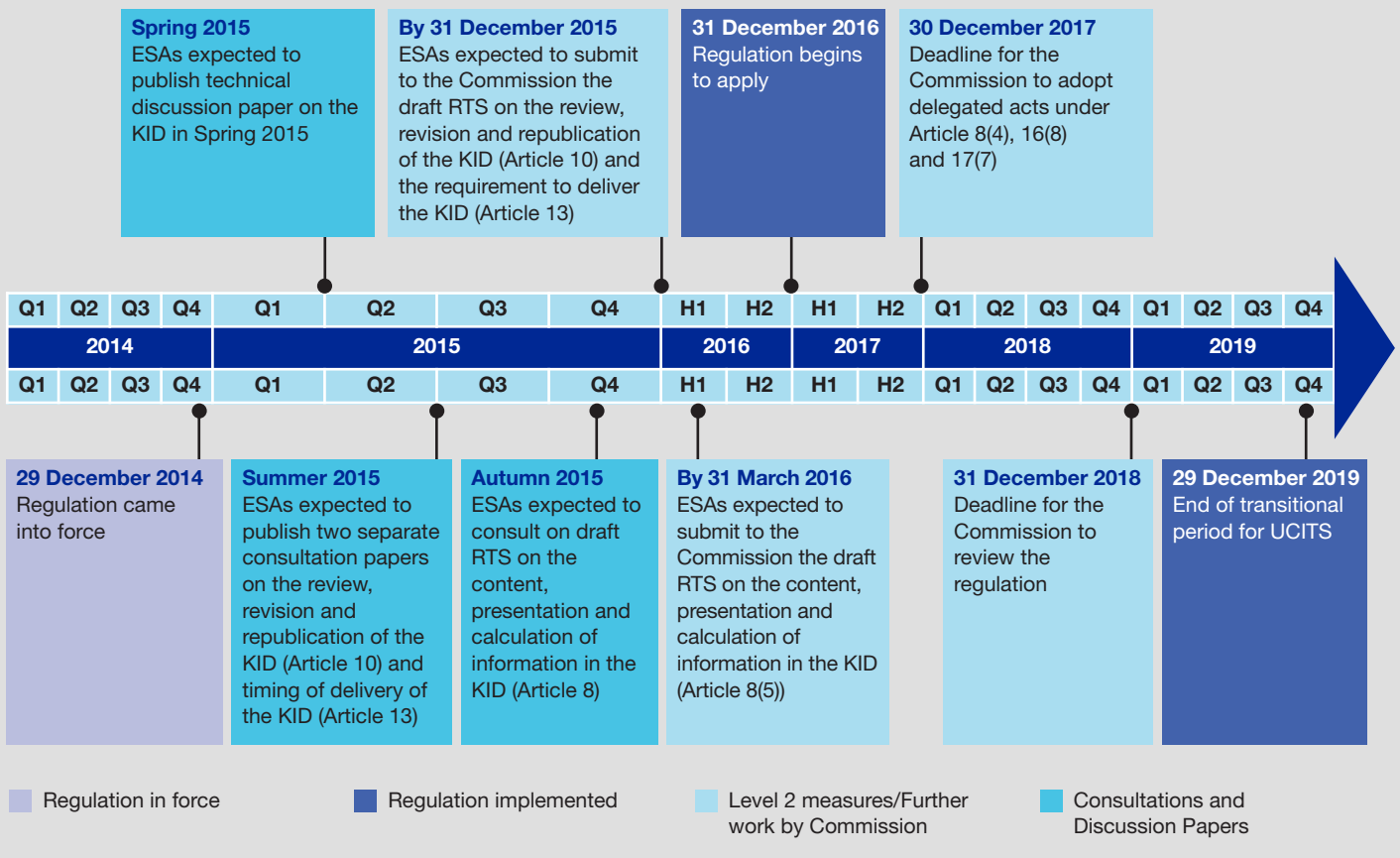
Work has already commenced on the Level 2 measures. On 17 November 2014, the ESAs issued a Discussion Paper as a preparatory step in the preparation of RTS, setting out their “early thinking”. The consultation period ended on 17 February

2015 and highlighted a number of issues that will need to be resolved including, fundamentally, how the PRIIPs KID Regulation will interact with other EU legislation, notably MiFID2, Solvency II, IMD, AIFMD and UCITS. To take an example from the insurance sector, regulatory requirements at the European level on product disclosure already exist in Solvency II. There is a risk that the duplication of disclosure requirements between Solvency II and the PRIIPs KID Regulation could result in information overload for consumers – causing confusion rather than simplifying purchasing decisions.

Developing uniform rules across such a wide range of products will be a challenge

and further consultations will be issued during the course of 2015. A separate discussion paper will be issued by the ESAs this Spring on the more complex aspects of the RTS, with further consultations to follow in the Summer on the specific RTS required under Articles 10 (*Review, Revision and Re-publication of the KID*) and 13 (*Timing of delivery of the KID*) of the PRIIPs KID Regulation. Finally, a consultation paper on the full RTS is expected in the Autumn of 2015. As can be seen, therefore, it will be some time before full details of the PRIIPs KID regime, and how it interrelates with other EU regulations, will be known.

Implementation Timeline



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