



Time to start PRIIParing!

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Introduction

From the start of 2018, all entities manufacturing packaged retail and insurance based products (“**PRIIPs**”) for sale to retail investors in the EU and entities advising on or selling PRIIPs to retail investors in the EU will be required to comply with a new set of rules as set out in the Regulation on key information documents (“**KIDs**”) for packaged retail and insurance-based investment products (“**PRIIPs Regulation**”).

With the clock ticking, entities should take stock of the new requirements and, if applicable, start taking active steps to prepare for the PRIIPs Regulation.

Background

Aim

The aim of the PRIIPs Regulation is to encourage efficient EU markets by helping retail investors to better understand and compare the key features, risks, rewards and costs of different PRIIPs, through access to a highly prescriptive and consumer-friendly three page Key Information Document. The PRIIPs KID is similar, but not identical, to the UCITS KIID.

Legislative Framework

The legislative framework comprises the Level 1 Regulation, Regulation 1286/2014/EU, the Level 2 Regulation, Commission

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Delegated Regulation (EU) 2017/653 and the Corrigendum to Commission Delegated Regulation (EU) 2017/653.

What is a PRIIP?

PRIIPs stands for **Packaged Retail and Insurance-based Investment Products**. A PRIIP is an investment where, regardless of its legal form, 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 that are not directly purchased by the retail investor; or an insurance-based investment product which offers a maturity or surrender value that is wholly or partially exposed, directly or indirectly, to market fluctuations. PRIIPs include investment funds, insurance-based investment products, retail-structured securities and structured-term deposits.

Stakeholders will need to review product ranges to identify PRIIPs. Identifying whether a particular product is a PRIIP may not be straightforward as the concept of '*exposure to reference values*' is wide. In some cases, affected entities will need to consider the specific terms of a product before determining whether or not it is a PRIIP.

Scope - Who will the PRIIPs Regulation apply to and what are affected entities required to do?

The PRIIPs Regulation applies to persons who:

-  manufacture PRIIPs for sale to retail investors in the EU, for example, fund managers, life insurance companies, credit institutions and investment firms.
-  advise on or sell PRIIPs to retail investors in the EU, for example, stockbrokers, distributors, advisers and other firms that provide advice to retail clients on funds, structured products and derivatives.

A PRIIP manufacturer (or any other person who changes an existing PRIIP, such as a distributor) is required to produce a PRIIPs KID and publish each PRIIPs KID on their website

A person who advises a retail investor on a PRIIP or sells a PRIIP to a retail investor must provide the retail investor with a PRIIPs KID in good time before any transaction is concluded. However, the responsibility to produce the PRIIPs KID rests with the manufacturer.

Where the retail investor initiates the transaction by means of distance communications, the PRIIPs KID may be provided after the conclusion of the transaction, as long as it is not possible to provide the PRIIPs KID in advance and the retail investor consents. The retail investor must be told that it is not possible to provide the PRIIPs KID in advance, and that they can delay the transaction in order to receive and read the PRIIPs KID before concluding the transaction.

It is important to note that the PRIIPs Regulation only applies if the PRIIP is made available to retail investors. The definition of a “retail investor” under the PRIIPs Regulation is in essence very restrictive and defined as meaning a “retail client” as set out in Directive 2014/65/EU (“MiFID II”), which is a client “who is not a professional client”.

Which Irish Funds are considered PRIIPs?

UCITS Funds

UCITS fall within the definition of PRIIPs but are exempt from the requirement to produce a PRIIPs KID until 31 December 2019 due to the UCITS KIID regime.

While the UCITS KIID shares similar goals as the PRIIPs KID, there are significant differences between the two:

UCITS KIID	PRIIPs KID
Two pages	Three pages
Risk indicator based on market risk	Risk indicator based on market risk and credit risk
No inclusion of transaction costs	Inclusion of transaction costs
Past performance indicator	Forward-looking performance scenarios (no past performance) including stress, unfavourable, moderate and favourable

Whilst UCITS are exempt from the PRIIPs KID regime until 31 December 2019, there may be situations where a UCITS could be required to produce data required for a PRIIPs KID before 31 December 2019. If we consider the case where UCITS are sold via unit linked insurance products for instance, there will be an obligation on the life insurer (as the PRIIP Manufacturer) to produce a PRIIPs KID for the underlying investment, the UCITS Fund in this case. This will necessitate data exchange between the asset manager and the life insurer as the insurer will require data input from their asset managers in order to produce the PRIIPs KID.

Retail Investor Alternative Investment Funds

RIAIFs generally fall within the definition of PRIIPs and will be required to produce a PRIIPs KID from 1 January 2018 where they are sold to retail investors.

Qualified Investor Alternative Investment Funds

QIAIFs are generally out of scope given that they are typically marketed to non-retail investors. As counterintuitive as it may seem, one surprising consequence for QIAIFs is that the definition of “Qualifying Investor” under the Central Bank AIF Rulebook may in certain limited circumstances bring a QIAIF within the definition of a PRIIP where QIAIFs do not limit investor eligibility to professional clients under MiFID. QIAIF managers may need to consider this potential issue.

Content of PRIIPs KID

The PRIIPS RTS specify the exact contents of the PRIIPs KID. The PRIIPs KID must outline the product's aims, how risky it is, when investors can get their money back, how much it costs and its expected returns. All of this information must be set out in a standard way, irrespective of the type of investment product.

More specifically the PRIIPs RTS provides for:

- (i) a mandatory template for the PRIIPs KID, covering the texts and layout to be used;
- (ii) a methodology for the assignment of each PRIIP to one of the seven classes in the summary risk indicator and narrative explanations to be included;
- (iii) details on performance scenario and a format for their presentation, including possible performance for different time periods;
- (iv) a methodology for the calculation of costs and the requirements relating to the presentation of costs;
- (v) rules on revision and re-publication of the PRIIPs KID; and
- (vi) rules regarding the timeframe for providing the PRIIPs KID to a retail investor to ensure they have sufficient time to consider its contents when making an investment decision.

Some other Issues to consider

Data Exchange Model

The PRIIPS Regulation will necessitate data exchange between different stakeholders of a PRIIP. For example, insurers may need data from fund manager as they will be required to provide PRIIP KIDs for their insurance products that have an investment component managed by an independent asset manager. An appropriate data exchange model should be implemented among stakeholders.

Review of Distribution Process

The distribution process and relevant agreements governing the distribution process should be reviewed to ensure compliance with the PRIIPs Regulation and clarify the respective obligations and liabilities of the manufacturer and adviser/seller in relation to the PRIIPs KID.

Review of process governing production and translation of marketing material of PRIIP

The PRIIPs Regulation requires marketing communications that contain specific information relating to the PRIIP shall not include any statement that contradicts the information contained in the PRIIPs KID or diminishes the significance of the PRIIPs KID. In addition, marketing communications shall indicate that a PRIIPs KID is available and supply information on how and from where to obtain it, including the PRIIP manufacturer's website. The PRIIPs Regulation also requires that if a PRIIP is promoted in a Member State through marketing documents written in one or more official languages of that Member State, the PRIIPs KID shall at least be written in the corresponding languages.

The arrangements and agreements governing production of marketing material should be reviewed to ensure these requirements are complied with.

How can Dillon Eustace help?

Dillon Eustace has a dedicated PRIIPs working group. Please contact your usual Dillon Eustace contact with any queries you may have.

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