



FINANCIAL SERVICES

Key Information Document For Packaged Retail Investment And Insurance Products

by

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An EU Regulation relating to key information documents for packaged retail and insurance-based products (PRIIPs) was published in December 2014.

Retail consumers and investors across the EU who are considering purchasing an investment product will have to be provided with a document containing standardised information about the product to assist them in evaluating the product.

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) will apply in all Member States from 31 December 2016.

The Regulation aims to overcome the perceived difficulties consumers have in navigating retail investment markets by proposing to provide for clear disclosures as to the risks and features of PRIIPs. The European Union wants consumers to be provided with standardised information to allow them to make informed choices between a range of investment and insurance products. The Regulation follows a study undertaken by the European Commission which found that, on average, 60% of sales of retail investments in the European Union were not suitable or in the best interests of the consumer.

What are PRIIPs?

The definition of PRIIPs under the Regulation is wide and captures many investment products. Packaged retail investment products are defined in the Regulation as investments, including those issued by special purpose vehicles or securitisation entities, where the amount repayable to the retail investor is subject to fluctuations due to exposures to reference values or to the performance of assets which are not directly purchased by the retail investor. Insurance-based investment products under the Regulation mean an insurance product which offers a maturity or surrender value which is wholly or partially exposed, directly or indirectly, to market fluctuations.

The following are examples of products caught within the scope of the Regulation:

- Insurance policies;
- Banking products;
- UCITS funds and retail alternative investment funds;
- Instruments issued by SPVs; and
- Structured products.

A number of products are explicitly excluded from the scope of the Regulation including the following:

- Pension schemes;
- Life insurance products;
- Shares and sovereign bonds held directly; and

- Deposits which carry no investment risk.

What is a Key Information Document (KID)?

KIDs are documents which must be given, free of charge, to the consumer by the person selling or advising on the PRIIP, before a binding agreement is made. The Regulation specifies that a KID should be completely separate from any marketing materials of the PRIIP or any document that is needed for other regulatory disclosures. The KID should provide fundamental information on the risks, costs and features of the PRIIP to allow a consumer to compare different PRIIPs.

The Regulation has specified the content which every KID will need to contain. This includes the identity of the product and the product manufacturer, the nature and main features of the product and also the risk and reward profile of the product. The information contained in the KID should be kept to a minimum to ensure it does not become overcomplicated for the consumer.

Importantly, the Regulation states that all KIDs should be no more than three A4 pages in length and should use non-technical language.

In addition, the Regulation stipulates that KIDs should be consumer conscious at all times and sets out a requirement for manufacturers to include a “comprehension alert” on KIDs for the consumer, if products are deemed to be very complex. This is intended to assist in highlighting to the consumer, the complex nature of certain products.

The Consequences of a Misleading KID

The product manufacturer can be found liable for loss where an investor can prove that the KID was inaccurate or inconsistent with any of the contractual documents relating to the PRIIP. The Regulation also states that the burden of proof lies with the product manufacturer to show that they have complied with the Regulation in response to any investor claims to the contrary.

EU Member States will be required to have appropriate sanctions and measures for any breaches of the Regulation. A non-exhaustive list of the breaches that should result in sanctions and the sanctions and measures to be applied is contained in the Regulation.

UCITS Funds

Collective investment schemes structured as Undertakings for Collective Investment in Transferable Securities (UCITS) are already required to produce a key investor information document similar to the proposed KID. Despite UCITS also falling within the Regulation, the Regulation provides for a five year transitional period for UCITS whereby they will not be obliged to produce a KID under the Regulation. Instead, UCITS will continue to produce key investor information documents in the existing format during the course of the transitional period. It is anticipated that the two regimes will be harmonised following the end of the five year transitional period.

Timeline

The Regulation will apply in all Member States from 31 December 2016.

The Regulation makes provision for a review of the effectiveness of its measures after four years, to ensure the Regulation is having the desired effect and is up to date with any market developments.

On 17 November 2014, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Markets and Securities Authority published a discussion paper on KIDs. The three bodies are mandated by the Regulation to develop and provide Regulatory Technical Standards (RTS). The RTS will outline rules regarding the content and presentation of KIDs for PRIIPs.

If the UCITS experience is an accurate barometer, then firms currently offering PRIIPs should start considering how they will roll out KIDs across their business lines sooner rather than later. There are significant challenges involved in drafting a three page document which accurately describes the often

complex nature of financial products in a way which will meet with the requirements of the Regulation. In addition, those firms offering PRIIPs will need to consider the manner in which PRIIPs will be distributed through tied agents and/or intermediaries to ensure consumers are in receipt of up-to-date KIDs before the PRIIP is sold to consumers. Operationally there is potentially a lot of preparation required to ensure the requirements of the Regulation can be met. The key will be to start preparing as early as possible.

If you would like any further information on the upcoming PRIIPs requirement, please contact Trevor Dolan at tdolan@lkshields.ie.

About the Author