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# PRIIPS: What You Need To Know

by **David Williams**

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KIDs must accompany PRIIPs from 1 January 2018 - a deadline which is less than four months away.

Regulation (EU) 1286/2014 (the Regulation) introduced a requirement for all Packaged Retail and Insurance-Based Investment Products (PRIIPs) to be accompanied by a Key Information Document (KID).

The Regulation will apply from 1 January 2018, which means that all PRIIPs made available to retail investors in 2018 must be accompanied by a KID.

So what is a PRIIP, and a KID and what do you need to do now to comply?

## What is a PRIIP?

The definition of PRIIPs under the Regulation is wide and captures many investment products. Packaged retail investment products are investments where the amount repayable 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 mean an insurance product which offers a maturity or surrender value which is wholly or partially exposed, directly or indirectly, to market fluctuations.

Our previous article on this topic, which is available [here](#), includes examples of PRIIPs and products within the scope of the Regulation.

## What is a KID?

Before a PRIIP is sold or made available to a retail investor, the manufacturer of the PRIIP is required to draw up a KID in accordance with the Regulation and publish the KID on its website. The KID must:

1. constitute pre-contractual information which is accurate, fair, clear and not misleading;
2. be a standalone document, separate from marketing materials and with no cross-references to marketing materials
3. be concise and written on a maximum of three sides of A4-sized paper, focusing on the key information needed by retail investors in a style and language which facilitates understanding
4. be in the official language of the Member State where the PRIIP is being distributed

The Regulation specified that the KID would set out information on the nature and main features of the PRIIP along with the risks, costs and return of the PRIIP. The Commission Delegated Regulation (2017/653) (the Delegated Regulation) contains prescriptive requirements for the content of the KID. The KID must contain a number of specific sections including a general information section, sections called "what is this product?" and "what are the risks and what could I get in return?" sections. Other sections cover costs, how to complain and what happens if the PRIIP manufacturer is unable to pay out.

KIDs must be reviewed and updated every twelve months or where there is a material change to the product.

## Who are retail investors?

Retail investors, for the purposes of the Regulation, are investors that are not professional clients as defined

under MiFID II.

Generally professional clients under MiFID II are;

1. entities required to be authorised or regulated to operate in financial markets
2. large, unregulated undertakings which meet certain size requirements
3. national and regional governments
4. other institutional investors whose main activity is to invest in financial instruments
5. clients that choose to be treated as professional clients, provided they can satisfy the tests outlined in MiFID II

It is also worth noting that the European Commission confirmed in recent guidelines that the Regulation only applies to PRIIPs made available to retail investors within the European Economic Area (EEA). If the PRIIP is made available to retail investors outside the EEA then the Regulation does not apply.

## **UCITS and AIFs**

### UCITS

The Regulation does apply to regulated investment funds, but Undertakings for Collective Investment in Transferable Securities (UCITS) are exempt from preparing a KID under the Regulation until 31 December 2019. In the meantime, UCITS will continue to prepare the similar Key Investor Information Document (KIID).

The European Commission will conduct a review of the Regulation by 31 December 2018. The review will include a determination as to whether UCITS should be brought within scope of the Regulation or if UCITS should continue to be exempt from the Regulation and produce the KIID.

### AIFs

In Ireland, both Qualifying Investor Alternative Investment Funds (QIAIFs) and Retail Investor Alternative Investment Funds (RIAIFs) are impacted by the Regulation to the extent that they distribute their product to retail investors. RIAIFs are caught within the Regulation as their shares are made available to retail investors.

QIAIFs are also impacted by the Regulation as they may be distributing to retail investors. QIAIFs sell to "qualified investors", which can include investors that are not professional investors under MiFID II. This means that a QIAIF may be selling to retail investors and caught by the requirement to produce a KID. QIAIFs should review their fund documents now to determine which types of investor can purchase their shares.

This issue was highlighted in the latest version of the Q&A released by European Supervisory Authorities (namely the European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority) which confirmed that the definition of retail investors under the Regulation is by reference to the MiFID II definition of retail investors only.

## **Next steps**

PRIIP manufacturers and distributors should begin to prepare the KIDs to accompany their PRIIPs now to ensure they do not lose the ability to offer or sell PRIIPs to retail investors.

Managers of QIAIFs should review their fund documentation and consider whether the QIAIF can sell to retail investors. If it currently has the ability to sell to retail investors, the QIAIF should consider drafting a KID to comply with the Regulation or limit the sale of its shares to professional clients or non-EU investors only.

*If you would like any further information as to how PRIIPs may affect your business, please contact [David Williams](#).*

## About the Author



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