

Guidelines on the PRIIPs Level 1 Regulation

An overview of the European Commission guidelines on the production of KIDs for PRIIPs

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PRIIPs will bring new legislation governing the sales of certain investment products from 1 January 2018. With the publication of two documents on 4th July 2017, we have more clarity on how to apply the PRIIPs rules and regulations. However questions remain on how to interpret and implement certain aspects, and we expect further Q&A documents will be produced over the rest of 2017.

Level	Document	Date
Level 1	Regulation (EU) No 1286/2014	9 th December 2014
Level 2	Commission Delegated Regulation (EU) 2017/653	12 th April 2017
Level 3	Questions & Answers on the PRIIPs KID	4 th July 2017

What is the Level 1 Regulation?

The [PRIIPs Level 1 Regulation](#) requires that the manufacturers of Packaged Retail and Insurance-based Investment Products (**PRIIPs**) draw up a Key Information Document or **KID** for each PRIIP before it is made available to investors.

The regulations at Level 1 cover the following areas:



The Level 1 text provides for Level 2 Delegated Regulations in the form of Regulatory Technical Standards (**RTS**) prepared by the European Commission (**EC**) covering the specific form and content of KIDs, arrangements for so-called multi-option products, review & revision requirements for KIDs as well as the delivery of KIDs to customers.

The RTS were finalised in April 2017. The Joint Committee of the European Supervisory Authorities (**ESAs**) are mandated to provide further Level 3 guidance on the RTS which they have indicated will be in the form of Q&As, the first of which has now also been published.

New Publications

On the 4th July 2017 the European Commission (EC) published its [guidelines](#) on the application of the PRIIPs Level 1 Regulations.

Simultaneously, the Joint Committee of the European Supervisory Authorities (ESAs) published its first set of [Q&A](#) regarding interpretation of the PRIIPs Level 2 Regulatory Technical Standards or RTS which is focussed on more technical matters. This includes issues linked with the presentation, content and review of the KID, including the methodologies underpinning the risk, reward and costs information. We have summarised the Q&A in a separate [briefing note](#).

Key takeaways

The EC felt it appropriate to publish its guidelines in order to smooth out potential interpretive divergences in the EU and following the receipt of feedback from industry stakeholders.

- ✓ Firms will be in breach of the regulations if a PRIIP is sold after 2017 without a KID.
- ✓ There is a common thread through the guidelines that the principle of a KID being accurate, fair, clear and not misleading is of utmost importance.
- ✓ A KID is not required in respect of “changes to existing commitments” that are subject to contractual terms and conditions agreed before 31 December 2017. However, this does not cover top-ups or switches on products that continue to be available for sale after that date which continues to leave uncertainty.
- ✓ Manufacturers and persons advising on, or selling, retail investment and insurance products are solely responsible for determining which of their products are in scope.
- ✓ The derogation for multi-option PRIIPs only relates to the format of the KID rather than the content so in effect equivalent information must be communicated whether individual KIDs are provided or alternatively a generic KID for the product as a whole and specific information on the underlying investment options.
- ✓ UCITS cannot voluntarily opt-in to the use of PRIIPs KIDs rather than using the existing UCITS KIID before 2020.

It is clear that there are areas of Level 1 interpretation where firms will have to make their own decisions. At this point, with the looming deadline of 1 January 2018, firms must now make such critical decisions and press on with systems implementation and development of governance structures.

More details on the issues covered in the EC guidelines follow.

Scope of the regulations

Responsibility for determining whether a product is in scope rests with the product manufacturer and those advising on and selling products to retail investors. A definitive list of products in scope has not been provided, instead it is up to the providers to apply and interpret the principles.

Some general clarifications were provided however:

- **Multi-option PRIIPs:** information on all underlying investment options must be provided to customers in advance to ensure they are well informed before investing (except in certain instances where exemptions apply). In certain circumstances this can be achieved through sign-posting to other documentation, but generally all details required to be disclosed must be communicated for the entire PRIIP, including all underlying investment options, before an investment decision is made by a customer.
This has consequences for open architecture and Portfolio Bond style products where the range of underlying funds available can be extremely wide.
- **Underlying investment options that are non-PRIIPs:** all insurance-based investment products are in scope and subject to uniform requirements, irrespective of whether the underlying investment options are themselves PRIIPs or non-PRIIPs.
- **Secondary markets:** KIDs don't necessarily have to be updated when a product is listed on a secondary market if the KID for the existing PRIIP is still relevant and accurate. If there are changes made to the offering however, such as different charges, a new KID may be required.
- **Territories:** the requirement for a KID arises according to the territory where a retail product is purchased. The territory where a product is manufactured or nationality of the purchaser is not a deciding factor. For PRIIPs only available to customers outside the EU a KID isn't required.
- **Transitional arrangements:** there are no specific transitional arrangements. Any and all new business from 1 January 2018 is in scope, regardless of the availability of the product prior to 1 January 2018. If a PRIIP is no longer available after 31 December 2017 a KID is not required. If a PRIIP was already available prior to this date and continues to be available then a KID is required (although questions still remain regarding treatment for top ups, switches etc.).
- **Advised vs non-advised sales:** KIDs must be provided to customers and made available online regardless of whether a product is sold with or without advice.
- **Intermediary sales:** even if a product is only sold by intermediaries a KID must be published on the manufacturer's website.
- **Out of scope:** a KID is not required if there is no premium payable (i.e. investment) related to a product. This may be relevant in connection with the assignment of existing policies.

Structure and general content of KIDs

The guidance does not provide much new information regarding the structure and content of a KID but some points were reiterated;

- **Adaptation:** the KID template cannot be altered (including titles and ordering of sections)
- **Length:** the KID must be concise and limited to no longer than three sides of A4 sized pages.
- **Non-PRIIP product offered alongside a PRIIP:** where a non-PRIIP product (e.g. a rider) is offered alongside a PRIIP where the information required for disclosure is not affected by the non PRIIP product, the KID may only refer to the non-PRIIP product in the 'Other relevant information' section of a KID.

Other points

Some other items of interest covered in the guidance include:

- **UCITS:** UCITS products are exempt from the PRIIPs requirements until 31 December 2019. There is no provision allowing for the early replacement of the UCITS KIID with the PRIIPs KID.
- **Translation:** the KID must be provided in the language of the Member State where the PRIIP is distributed. Translations to other languages are not required where a website can be accessed by retail investors from other Member States. The manufacturer is responsible for the accuracy of the translation.
- **Civil liability:** the regulations do not exclude civil liability that may be incurred by a manufacturer for information on the underlying investment options which is misleading, inaccurate or inconsistent with contractual arrangements or with the Level 1 Regulation and RTS for PRIIPs.
- **"On-demand" KIDs:** there is no requirement for 'on demand' or 'real time' KIDs but they may be provided to customers as long as the general rules for the production of KIDs are met as well as publishing the KID on the website of the PRIIP manufacturer. We imagine in this case the bespoke KID could be made available to customers in a private area of the manufacturer's website.

Areas not covered in the guidance

Some areas remaining unclear include:

- **Scope:** the guidance does not give as much detail as was hoped for on the scope of the regulations. It does not address the uncertainty with regards to the exact interpretation of the pensions exclusion under PRIIPs and individual Member State application of this exclusion, as well as whether additional top-ups and switches between underlying investment options are in scope.
- **Multi-option PRIIPs:** although some guidance is given on multi-option PRIIPs, it doesn't provide clarity on how to reflect wrapper charges along with underlying investment option charges.
- **Discretionary fund management:** the guidance doesn't offer any view on how manufacturers offering discretionary fund management and/or "open-architecture" platforms can practically comply with the regulations in view of the multitude of potential underlying investment options.
- **Local territory issues;** some of the more country or product specific issues related to individual markets (e.g. taxation and forms of distributor fees) are not addressed.

It is also worth noting that these issues are not addressed in the ESA's Q&A as yet.

How Milliman can help

We have been monitoring PRIIPs developments since the outset of the project and our consultants have been involved in advising our clients on product disclosures both domestically in Ireland and across the EU market over the last number of years.

We have undertaken a wide range of PRIIPs work for clients including:

- PRIIPs scoping
- End-to-end production of complete KIDs
- Production of quantitative elements of KIDs including risk ratings, performance scenarios and cost disclosures
- Data sourcing and data quality review for KID production
- Review of KID elements including narratives and numerical disclosure tables
- PRIIPs implementation planning and project management
- Checking of overall compliance with the PRIIPs requirements

As a result, we have a wide range of relevant experience that can benefit your business.

For more information contact your usual Milliman consultant or one of the contacts listed below.



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