

COMMUNICATION FROM THE COMMISSION**Guidelines on the application of Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs)****(Text with EEA relevance)**

(2017/C 218/02)

1. INTRODUCTION

- (1) 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) (hereinafter 'Regulation 1286/2014')⁽¹⁾ lays down uniform rules on the format and content of the key information document (hereinafter 'KID') to be drawn up by PRIIP manufacturers and on the provision of the KID to retail investors by PRIIP manufacturers and those selling, or advising on, those products.
- (2) The KID introduces a common standard for setting out retail investor information for a wide range of PRIIPs and enables retail investors to understand and compare the key features, risks, potential future performance and costs of PRIIPs, thus enabling retail investors to make informed investment decisions.
- (3) This Communication seeks to further facilitate the implementation of, and the compliance with, Regulation 1286/2014 by smoothing out potential interpretative divergences throughout the Union. It builds on the feedback from stakeholders received in a technical workshop on the implementation of the PRIIPs framework organised by the Commission on 11 July 2016, and subsequent queries received by the Commission, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.
- (4) This Communication does not contain or create new legal rules. The Commission's position is without prejudice to any interpretation that the Court of Justice of the European Union may give to Regulation 1286/2014 in the future, or to any delegated or implementing act adopted pursuant to that Regulation.

2. GUIDELINES

- (5) Products covered by Regulation 1286/2014

Manufacturers of retail investment and insurance products and persons advising on, or selling, those products to retail investors are responsible for assessing which products must comply with the provisions of Regulation 1286/2014. That assessment must take into account, in particular, the specific economic features and contractual terms and conditions of each product.

- (6) Products made available to retail investors against no consideration

A product whose acquisition does not require payment by the retail investor, meaning that there is neither an initial payment nor any risk of future financial commitments by the retail investor, is not considered an investment within the meaning of Article 4(1) of Regulation 1286/2014 and, therefore, requires no KID.

- (7) Multi-option PRIIPs

In view of the specific features of multi-option PRIIPs, namely where information required in Article 8(3) of Regulation 1286/2014 with regard to each underlying investment option cannot be provided within a single, concise stand-alone document, Article 6(3) of Regulation 1286/2014 only allows for derogation from the format of the single KID. Given the scope of that derogation, PRIIPs manufacturers of such multi-option PRIIPs must comply with all the other provisions of Regulation 1286/2014. Therefore, the KID produced in accordance with point (b) of Article 10 of the Commission Delegated Regulation (EU) 2017/653⁽²⁾ (hereinafter 'Commission Delegated Regulation'), and in conjunction with Article 14(1) of the Commission Delegated Regulation, must also comply with Articles 13 and 14 of Regulation 1286/2014.

⁽¹⁾ OJ L 352, 9.12.2014, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents (OJ L 100, 12.4.2017, p. 1).

(8) Insurance-based investment products with PRIIPs and non-PRIIPs as underlying investment options

Regulation 1286/2014 requires that all insurance-based investment products be subject to uniform requirements in relation to the provision of the KID to retail investors, irrespective of whether the underlying investment options of those PRIIPs are themselves PRIIPs.

(9) Changes to existing PRIIPs included in the definition of 'PRIIP manufacturer'

Article 4(4) of Regulation 1286/2014 defines the 'PRIIP manufacturer' as an entity that manufactures PRIIPs or an entity that makes changes to an existing PRIIP including, but not limited to, altering its risk and reward profile or the costs associated with an investment in a PRIIP.

That definition includes examples of changes to an existing PRIIP that would render an entity a 'PRIIP manufacturer' for the purposes of Regulation 1286/2014, but is not limited to those examples. The objective of Regulation 1286/2014 is to ensure that information provided in the KID is accurate, fair, clear and not misleading for retail investors and that it allows retail investors to compare different PRIIPs and to fully understand their individual features. However, the listing of an existing PRIIP on a secondary market may not automatically imply a change which alters its risk and reward profile or the costs associated with that PRIIP.

(10) Territorial application

Regulation 1286/2014 applies to all PRIIP manufacturers and persons advising on, or selling, PRIIPs made available to retail investors within the territory of the Union, including such entities and persons from third countries. Consequently, where retail investors within the territory of the Union decide to subscribe or purchase third country PRIIPs, the requirements established in Regulation 1286/2014 apply. In such cases, in accordance with Article 13(1) of Regulation 1286/2014, a person advising on, or selling, those PRIIPs must provide retail investors with a KID.

Where applicable, sectorial rules laying down the conditions under which PRIIPs manufacturers or persons advising on, or selling, PRIIPs from third countries may carry out their activities within the Union must be observed and complied with⁽¹⁾.

Where a PRIIP is only made available to investors outside the Union, a KID is not required.

(11) Running offers on 1 January 2018

Regulation 1286/2014 does not provide for any specific transitional legal regime concerning PRIIPs made available to retail investors before 1 January 2018 that continue to be made available to retail investors after that date and it therefore applies to those PRIIPs.

(12) Offers closed by 31 December 2017

Where a PRIIP is no longer made available to retail investors as of 1 January 2018 and changes to the existing commitments are only subject to the contractual terms and conditions agreed before that date, a KID is not required.

Where those contractual terms and conditions allow exiting the PRIIP, but that PRIIP is no longer made available to other retail investors after 1 January 2018, a KID is not required.

⁽¹⁾ For example, Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19), Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349), Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1), Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1), Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS), Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (OJ L 345, 31.12.2003, p. 64).

(13) Use of KIDs by UCITS

Undertakings for collective investment in transferable securities (hereinafter 'UCITS') and alternative investment funds (hereinafter 'AIFs') which are subject to the requirement to produce the Key Investor Information Document (hereinafter 'KIID') under national law are exempt from the provisions of Regulation 1286/2014 by virtue of its Article 32(1) until 31 December 2019. Regulation 1286/2014 does not however include any provision which allows for replacing the KIID with the KID.

(14) Translations of KIDs

Under Article 7 of Regulation 1286/2014, a KID must be provided in a language prescribed by the Member State where the PRIIP is distributed in order to ensure that retail investors can understand it. The mere fact that the website of a person advising on, or selling, a PRIIP may also be accessed by retail investors from Member States other than the Member State in which the PRIIP is distributed by that person (i.e. is not made available to these retail investors), does not imply a requirement to provide the KID in languages prescribed by those other Member States

Regulation 1286/2014 does not explicitly specify who should translate the KID if the PRIIP is to be made available cross-border. However, it is clear from Article 11 of Regulation 1286/2014 that the PRIIP manufacturer is responsible for the accuracy of the translation. Equally, Article 5(1) of Regulation 1286/2014 establishes that the translated KID must be published on the website of the PRIIP manufacturer.

(15) Civil liability for information on the underlying investment options

Article 11 of Regulation 1286/2014 does not exclude civil liability that may be incurred by manufacturers of PRIIPs in respect of the specific information on the different investment options where that information would prove to be misleading, inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the requirements laid down in Regulation 1286/2014 and the Commission Delegated Regulation.

(16) Distribution channels

Regulation 1286/2014 does not distinguish between PRIIPs sold with or without advice provided to the retail investor, or acquired by the retail investor on its own initiative or otherwise. For any PRIIP made available to retail investors, a PRIIP manufacturer must draw up and publish for that product a KID on its website and a person advising on, or selling, that PRIIP must provide the retail investors with that KID.

(17) PRIIPs only sold by intermediaries

Even where a PRIIP is sold exclusively by persons other than the PRIIP manufacturer, the PRIIP manufacturer is required under Article 5(1) of Regulation 1286/2014 to draw up and publish a KID for that product on its website.

(18) Distribution of a PRIIP without a KID

A person advising on, or selling, a PRIIP must provide retail investors with the KID in accordance with Article 13 of Regulation 1286/2014. A distribution of a PRIIP without a KID is a breach of Regulation 1286/2014.

(19) A non-PRIIP product offered alongside a PRIIP

Where a non-PRIIP product is offered alongside a PRIIP and the information referred to in points (a) to (h) of Article 8(3) of Regulation 1286/2014 is not affected by the non-PRIIP product, the KID of that PRIIP may only refer to the non-PRIIP product in 'Other relevant information' section.

(20) Adaptations to the KID

Regulation 1286/2014 does not allow for any adaptation to the KID, including titles and sequence of sections.

(21) Length of the KID

Regulation 1286/2014 clearly states that the KID must be drawn up as a short document written in a concise manner and on a maximum of three sides of A4-sized paper when printed.

(22) Specification of a competent authority

Point (a) of Article 8(3) of Regulation 1286/2014 only requires that information about the competent authority of the PRIIP manufacturer be included in the KID, namely, information about the competent authority of the Member State where the PRIIP manufacturer is established, irrespective of whether that PRIIP manufacturer carries out activities across borders.

(23) 'On demand' or 'real time' KIDs

Under Article 10(1) of Regulation 1286/2014, PRIIP manufacturers must revise the KID where a review indicates that changes need to be made. The revised KID shall be made available promptly. Neither Regulation 1286/2014 nor the Commission Delegated Regulation requires PRIIP manufacturers to provide 'on demand' or 'real time' KIDs. Unless the Commission Delegated Regulation specifies otherwise, the frequency with which the manufacturer must review and revise the KID depends on the nature of the PRIIP and the extent to which the information provided in the KID remains accurate and not misleading.

At the same time, systems for producing the KID 'on demand' or in 'real time' are allowed, as long as the resulting revised KIDs comply with the rules of Regulation 1286/2014, including the publication on the website of the PRIIP manufacturer.
