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Preparing for PRIIPS and the KID: finding answers to the questions

The PRIIPS Regulation comes into force on 31 December 2016. Although many industry commentators continue to call for a postponement – arguing that the timescale is too tight in view of the systems and operational changes firms will need to make - a delay is looking increasingly unlikely. With just over four months to go, firms therefore need to be prepared: the Regulation and its associated draft regulatory technical standards raise many questions to which practical answers must be sought.

WHY YOU SHOULD READ THE REST OF THIS BRIEFING (EVEN IF YOUR FIRM HAS NO RETAIL CLIENTS)

- The definition of "PRIIP" is extremely broad – in addition to funds which are naturally considered as retail products (such as UCITS, NURS and other regulated funds, VCTs and listed investment trusts), all other funds, whether open or closed-ended, are *capable* of being PRIIPs.
- The Regulation will apply to manufacturers and distributors of a PRIIP if the PRIIP is "made available" to retail investors. The definition of "retail investor" is derived from another piece of legislation. Many larger institutional investors will be considered to be professionals automatically and will therefore not be retail investors, but this does not apply in the case of local authorities. It is possible to "opt-up" to professional status investors who would otherwise be retail (including local authorities), but this must be done using strict opt-up criteria.
- Asset managers will, in all likelihood, be the "manufacturers" of their funds and therefore potentially subject to the Regulation and its requirement to publish a key information document if their funds are made available to retail investors.
- There may be an issue with regards to products which are generally targeted at professional investors, but which are also "made available", directly or indirectly, to retail investors in some way - for instance, there may be issues with regards to carried interest and co-investment arrangements which are made available to staff, families and friends and in relation to some family office investment in funds.
- Offshore manufacturers or distributors will be caught if the fund or product is made available to retail investors in the EEA.
- The Regulation comes into force on 31 December 2016: if caught, there is very little time to prepare.

THE PRIIPS REGULATION: Q&AS

PART A: GENERAL

In the Appendix we set out a brief Glossary of some of the terms used in this briefing.

Q.1: What is the PRIIPS regulation?

In outline, the PRIIPS Regulation, a piece of EU legislation which will be directly applicable in EU Member States, is a cross-sectorial, product disclosure measure. It requires a "product manufacturer" to prepare and publish a Key Information Document (**KID**) for any of the packaged retail investment products or insurance based investment products (**PRIIPS**) which it produces. As we explain in more detail below, PRIIPS include investment funds, life insurance policies with an investment element, structured investments and deposits, derivatives and certain instruments issued by special purpose vehicles. Importantly, the KID must be prepared and published *before* the PRIIP is "made available" to retail investors.

Q.2: When does it apply?

31 December 2016. Postponement of the Level 1 Regulation is unlikely, but it is possible that the associated regulatory technical standards (**RTS**) may not be agreed and finally published by that date. See Q.21 below.

Q.3: What is the purpose of the PRIIPS regulation?

The purpose of the KID is to improve transparency for retail investors by providing them with a short document, containing the key information about a product, which will enable them to make informed investment decisions.

The KID must be presented in a prescribed format that will allow investors to more easily compare different investment products.

On the face of it, it sounds straightforward. However, in practice, the challenges are significant:

- while the Level 1 PRIIPS Regulation itself is settled, the Level 2 RTS - which set out a great deal of highly complex detail on the content of the KID - are still not finalised with just over 4 months to go;
- the approach adopted in some areas in the RTS is completely at odds with the approach that was consulted on (and on which firms and industry associations commented);
- uncertainties remain concerning the scope of the Regulation in a number of areas; and
- there is no grandfathering for existing products (except for UCITS).

PART B: SCOPE AND APPLICATION

Q.4: What is a PRIIP?

PRIIPs comprise both "packaged retail investment products" and "insurance-based investment products".

The definition of "packaged retail investment product" is very broad. It covers investments where, regardless of the legal form of the investment, the amount repayable to the investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the investor. It includes instruments issued by special purpose vehicles or securitisation special purpose vehicles.

An "insurance-based investment product" is defined as an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations.

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The underlying assets may be, but do not need to be, investments or financial instruments.

For some firms, working out whether or not they manufacture or distribute PRIIPS will be clear from the face of the product. In some cases, however, it may be necessary to consider the specific terms of a particular product before determining whether it constitutes a PRIIP. A number of areas of uncertainty remain.

PRIIPS – the FCA's view

The FCA has published an indicative, non-exhaustive list of products which it regards as within the scope of the definition of PRIIP:

- regulated collective investment schemes (including NURS, QIS and recognised overseas schemes);
- unregulated collective investment schemes (including some unauthorised unit trust schemes, VCTs and private equity funds);
- alternative investment funds which are not collective investment schemes (such as investment trusts);
- investment trust savings schemes;
- insurance-based investment products (such as unit-linked policies and with-profits policies);
- fluctuating return annuities that are not pension products (e.g. purchased life annuities with variable returns);
- derivatives (including options, futures, and contracts for differences);
- structured investment products; and
- structured deposits.

Source: Consultation paper on the Changes to the Disclosure Rules in the FCA Handbook to reflect the Direct Application of PRIIPS Regulation ([CP16/18, 18 July 2016](#)) and the FCA's [PRIIPS disclosure](#) webpage.

Q.5: What isn't a PRIIP?

Although the definition of PRIIP is broad, some assets will be outside the scope of the Regulation:

Assets which are not PRIIPS:

Assets which are not packaged:

The "packaging" of assets to produce different exposures or different product features or costs structures compared to a direct holding in an investment is a key defining feature of a PRIIP. Accordingly, by definition certain assets will not be caught. For instance, where there is direct investment into corporate shares or bonds the shares/bonds are not PRIIPS.

The FCA has confirmed that this extends to other instruments that are assets held directly by the retail investor and also to shares which are beneficially owned by the investor but which are held on their behalf under custody arrangements.

Assets which are expressly excluded by the Regulation:

Certain products and assets are expressly excluded from the scope of the Regulation. These include:

- non-life insurance products;
- life insurance contracts where the benefits are payable only on death or in respect of incapacity due to injury or sickness or infirmity;
- deposits (other than structured deposits which are not solely exposed to interest rates);
- officially recognised occupational pension schemes within the scope of the IORP Directive or the Solvency II (insurance) Directive (this includes all UK private sector funded occupational pension schemes, whether defined benefit (DB) or defined contribution (DC)); and
- other pension products which (a) under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits or (b) for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

UCITS (until 31 December 2019):

Manufacturers and distributors of UCITS are exempt from the requirements of the Regulation until 31 December 2019. The exemption will also be available in respect of NURS that have adopted the UCITS Key Investor Information (KII) regime.

Q.6: My firm is a UCITS manager: does the temporary exemption mean we don't have to worry about PRIIPS for three years?

No, not really – UCITS managers may be indirectly affected. Under the RTS any PRIIP manufacturer (e.g. an insurer) that offers a product with multiple investment solutions will need to incorporate into their KID PRIIPS compliant information about the *underlying* investment solutions. For example, retail investors may be permitted to take exposure to a UCITS fund through an insurance wrapper. In this case, any insurer operating an open architecture investment platform or investment bonds is likely to request the UCITS manager, as manufacturer of the underlying investment solution, to provide PRIIPS KID-compliant information about its fund.

Although the UCITS manager will still have to produce the UCITS Key Investor Information (KII) there are important differences between this and a PRIIPS KID. It should therefore not be assumed that the existing processes for producing the UCITS KII will only need fine-tuning in order to provide PRIIPS compliant information.

Q.7: What is a retail investor and when is a product "made available" to such an investor?

The Regulation only applies where the PRIIP is "made available" to retail investors.

"Retail investor" has the same meaning as "retail client" in MiFID II – this means any client who is not a "professional client" for the purposes of MiFID II. (Any customer within the meaning of the Insurance Mediation Directive who would not qualify as a professional client for the purposes of MiFID II is also a retail investor.)

Therefore, the key issue is whether any of the potential investors in the PRIIP would fail to satisfy the MiFID II professional client criteria (regardless of the fact that the investors will not be "clients") and will therefore be "retail investors".

Retail investor: the technical definition

'Retail investor' means:

- a retail client as defined in point (11) of Article 4(1) [MiFID II]
- a customer within the meaning of [the Insurance Mediation Directive], where that customer would not qualify as a professional client as defined in point (10) of [MiFID II]

The MiFID II definition of professional client sets out certain categories of person who are considered to be professionals automatically, including:

- entities which are required to be authorised or regulated to operate in the financial markets (including banks, investment firms, insurance companies, funds and fund managers and pension funds);
- large, non-regulated entities meeting certain prescribed size tests; and
- national and regional governments (but not local authorities).

Certain persons who would otherwise be retail (i.e. who would not automatically be considered to be professionals) are capable of being "opted-up" to professional status by way of a specified procedure. However, that procedure is based on strict criteria relating both qualitatively to the expertise of the "client" and quantitatively as to the transactional history, portfolio size and/or professional financial employment of the "client". Any opt up must be performed in accordance with these MiFID criteria.

Importantly, local authorities are not automatically considered to be professionals under MiFID II and will therefore be retail investors for the purposes of the PRIIPS Regulation unless they are opted up to professional status under MiFID II criteria.

Although MiFID II itself does not come into force until 3 January 2018, this is not relevant for the purposes of the PRIIPS Regulation – the imported definition of "retail client" for the purposes of defining "retail investor" takes effect on 31 December.

The PRIIPS Regulation does not specify what "made available" means. The recitals to the Regulation state that investment funds dedicated to institutional investors are excluded from the scope of the Regulation on the basis that they are not for sale to – and therefore, presumably, are not made available to – retail investors.

A reasonable interpretative approach would be to say that the product is made available if a retail investor can buy it, whether directly from the product manufacturer or otherwise. Following such an approach, firms with a predominantly institutional investor focus may need to consider enhancing controls over distribution to ensure that their product is not inadvertently made available to retail investors.

Q.8: Is your firm a manufacturer of PRIIPS?

The PRIIP manufacturer is the person who manufactures the PRIIP or who makes changes to an existing PRIIP. Changes include, but are not limited to, alteration of the PRIIP's risk and reward profile or of the costs associated with the PRIIP.

There is no further clarification of what "manufacture" means, so the concept is capable of being construed broadly in keeping with the broad definition of "PRIIP" itself. A PRIIP manufacturer may or may not be a regulated financial services firm.

In many cases, there will be little or no doubt as to who the PRIIP manufacturer of a PRIIP is. In a few cases it may not so clear.

Asset managers, however, can expect to be regarded as the "PRIIP manufacturer" in relation to the funds which they manage, including:

- in a private equity or hedge fund context, AIFMs;
- UCITS managers;
- NURS managers;
- VCT managers; and
- investment trust managers.

A manufacturer of a PRIIP that is "made available" to retail investors is responsible for the preparation and publication of a KID.

Q.9: Is your firm a distributor of PRIIPS?

The Regulation also applies to those who advise on or sell a PRIIP.

Selling a PRIIP is defined as a person offering or concluding a PRIIP contract with a retail investor. It follows that the manufacturer of the PRIIP may also be the distributor if it sells the PRIIP and concludes the contract direct with the retail investor.

The obligation of a distributor is to provide the KID to the retail investor.

See Part D, Q.18-20 below.

Q.10: What is the territorial scope of the PRIIPS regulation?

The PRIIPS Regulation does not contain express territorial scope provisions. However, the definitions of PRIIP and PRIIP manufacturer (see below) are not expressly limited to EEA-based products and entities. Furthermore, the complaints process provision in the Regulation refers to the possibility of a complaint being made against a manufacturer in a third country. The PRIIPS Regulation is therefore capable of extraterritorial scope.

The key to understanding this extraterritorial scope is to ask whether the PRIIP will be "made available" to retail investors in the EEA. If it will be, any manufacturer or distributor of that product will be caught, regardless of where it is located.

Territorial scope:	
<p>My firm is outside the UK: does the PRIIPS Regulation apply?</p>	<p>Yes – if your firm targets EEA retail investors.</p> <p>No – if your firm does not target investors in the EEA at all*.</p> <p>No – if your firm does target investors in the EEA but none of them are retail investors*</p> <p><small>* and the product is not otherwise "made available" to retail investors.</small></p>
<p>My firm is in the UK: does the PRIIPS Regulation apply?</p>	<p>Yes – if your firm targets EEA investors and some or all of them are <i>retail</i> investors</p> <p>No – if your firm targets EEA investors but none of them are <i>retail</i> investors*</p> <p>No – if your firm only targets investors outside the EEA*</p> <p><small>* and the product is not otherwise "made available" to retail investors.</small></p>

If your firm is outside the EEA and does not target EEA investors or is a UK firm with a non-EEA investor base, you may need to reconsider your approach to distribution and whether it is necessary to enhance your existing controls to ensure that your products (if PRIIPS) are not inadvertently made available to retail investors in the EEA.

PART C: MANUFACTURERS

Q.11: Does it really matter if we get the KID wrong?

Firms should not underestimate the importance of getting the KID right.

The Regulation provides that the PRIIPS manufacturer will not incur civil liability solely on the basis of the KID, including any translation of it, unless it is "misleading, inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents" or with the information requirements set out in the Regulation as expanded upon in the RTS.

It goes on to say that the retail investor who demonstrates loss resulting from reliance on a KID when making an investment may claim damages from the manufacturer for that loss "in accordance with national law".

There is therefore the possibility that manufacturers may face civil liability to the retail investors if *any* aspect of the KID is not consistent with the detailed requirements set out in the Regulation and the RTS, even if this would not have made the KID misleading or inaccurate overall. However, the investors would have to show loss and, in founding a claim under English law at least, would have to show causation – i.e. a causal link between the non-compliant element of the KID and the loss suffered. However, whatever the technical legal

position, PRIIPS manufacturers will have to be ever mindful of their potential civil liability for inaccuracies in the KID, aside from possible regulatory sanctions which they might face.

Q.12: Is it possible to outsource the production of the KID?

Yes. Critical elements of the KID production are data intensive and likely to require specialist systems to be developed and tested. A PRIIP manufacturer can choose to outsource some or all of the KID production process but liability for the KID will remain with the PRIIP manufacturer (see Q.11 above). Firms which outsource will therefore need to consider carefully the robustness of what is being offered by their chosen outsource service provider to see whether it matches up to the KID compliance requirements. They will also need to consider the terms of the engagement carefully, addressing matters such as the service provider's liability, its financial strength and the adequacy of its insurance coverage.

Q.13: What should the KID contain?

The KID itself is a short document – it must not exceed three sides of A4-sized paper when printed out. There is a template which should be followed and some sample text for certain aspects. Therefore, some of the PRIIP is prescribed and standardised and, on the face of it, it looks simple. However, the factors which the firm must consider and the specific calculations it must undertake in order to produce the document in accordance with the RTS are complex.

Key issues which firms will need to focus on as a matter of priority include:

- determining the type of retail investor to whom the PRIIP is intended to be marketed;
- determining the recommended holding period for the PRIIP;
- calculating the summary risk indicator (SRI) – this will be a number between 1 and 7 based on an assessment of the PRIIP's market risk and credit risk according to the detailed criteria and models set out in the RTS. The methodology for calculating market risk and credit risk varies depending on the type of PRIIP. Many traditional investment funds will need to calculate market risk by reference to VaR measures based on the historic prices of the PRIIP over a 5 year period. Firms will need to be able to monitor the SRI on an ongoing basis;
- producing performance scenarios – unlike the UCITS Key Investor Information document the PRIIPS KID does not show past performance. Instead performance scenarios must be developed showing how the PRIIP may perform in the future based on 3 scenarios: unfavourable, moderate and favourable. The performance scenarios should be calculated at one year, half the recommended holding period and the recommended holding period. The KID for a typical medium term investment fund will therefore show 9 different performance scenarios. The detailed methodology to be used to produce the performance scenario information varies depending on the type of PRIIP. For many traditional investment funds it will be based on past performance data; and
- calculating the costs of the PRIIP – two tables need to be produced; one showing the effect of all costs by reference to reduction in yield and the other showing the impact of different categories of costs. The final draft RTS contains detailed methodology for calculating the costs for the purposes of these tables. For investment funds, portfolio transaction costs are included. These are to be calculated based on actual transaction costs over a 3 year period and include price slippage between the point when the order is passed for execution and the actual executed price. Whilst it appears to be accepted that intraday price information may not be available for periods before 31 December 2016, the implication from the RTS is that this data will need to be captured from 1 January 2017.

Q.14: How should the PRIIP be published?

The PRIIP manufacturer must publish the KID on its website. The purpose of this is to make the KID readily available for distributors and retail investors.

Q.15: What will this mean in practice for firms in the run-up to 31 December?

It is important that firms do not underestimate how long it will take to prepare for PRIIPS compliance. They will need to factor in various things, including:

- the calculation methodologies prescribed by the RTS will require extensive data capture and manipulation capabilities. Firms will need to design and test their systems and controls whether they intend to produce the required information internally or for linking to a third party provider;
- firms should also ensure that they have allowed sufficient time to arrange for and verify translations of the KID; and
- the KID must be prepared in an official language of *each Member State where the PRIIP is to be distributed to retail investors* and should be in the same language as other marketing documents. Translations must faithfully and accurately reflect the content of the original KID and the KID should remain within the 3 page limit. In this regard:
 - manufacturers may need to revisit arrangements with distributors to ensure that they only distribute the PRIIP to retail investors in countries for which a translation of the KID has been prepared; and
 - although the Regulation does not expressly state this as a requirement it seems likely that translations will be expected to be made available on the manufacturer's website too.

Q.16: Once the PRIIP has been prepared in accordance with the PRIIPS requirements, is that it?

Unfortunately no – firms must establish procedures for both regular review and ad hoc review of the KID if circumstances change.

The final draft RTS requires the PRIIP manufacturer to review the KID every time there is a change that significantly affects or is likely to significantly affect the information in the KID and, in any event, at least every 12 months following initial publication.

If changes are required, the KID should be updated without "undue delay" and the manufacturer should publish the updated KID on its website.

Q.17: Does the review obligation continue when a PRIIP is closed to new investors?

It is not entirely clear whether the above review obligation outlined in Q.16 above continues for closed products. Logically it ought not to. The final draft RTS requires PRIIP manufacturers to have adequate review processes "throughout the life of the PRIIP where it remains available to retail investors". This would suggest that if a product is totally closed with no possibility of future investment by retail investors it is no longer necessary to maintain and keep under review the KID.

Given the potential liabilities that can flow from a KID that is either inaccurate or misleading or not produced in accordance with the requirements of the Regulation, firms should ensure that version control processes are robust and the effective "shelf life" of each version of the KID is clearly documented.

PART D: DISTRIBUTORS

Q.18: What are the requirements for distributors?

Advisers and those who sell a PRIIP to a retail investor (i.e. distributors) are required to provide the investor with the KID "in good time" before the investor is bound by any contract or offer relating to the PRIIP.

The PRIIP manufacturer will be subject to this obligation where it is also the distributor – i.e. where it sells the PRIIP or contracts directly with the retail investor.

Q.19: Are there any exceptions?

There is an exception to the "in good time before" requirement for contracts concluded by means of distance communication. In this situation the KID can be provided without undue delay after the conclusion of the transaction if the following conditions are met:

- the retail investor chooses at his own initiative to contact the seller of the PRIIP and conclude the transaction by means of distance communications;
- it is not possible to provide the KID in good time before the investor is bound;
- the person advising on or selling the PRIIP has informed the investor that it is not possible to provide the KID in advance and has stated that the retail investor may delay the transaction in order to receive and read the KID before concluding the transaction; and
- the retail investor consents to receiving the KID after the transaction.

Q.20: How must the distributor provide the KID to the retail investor?

The distributor must provide the KID to the retail investors in one of the following ways:

- on paper – *this should be the default option where the PRIIP is offered to the retail investor on a face-to-face basis, unless the retail investor requests otherwise; or*
- using a durable medium (provided, broadly, that such medium is appropriate and the retail investor has been given a choice between paper and the durable medium and has opted for the latter in a way that can be evidenced); or
- by means of a website (provided the "website conditions" are met – i.e., broadly, that such medium is appropriate; the retail investor has been given a choice between paper and website and has opted for the latter in a way that can be evidenced; the retail investor has been notified of the website address and where to find the KID on that website and the KID remains accessible on the website and capable of being downloaded and stored for as long as the retail investment may need to consult it).

These requirements for durable medium or website provision are similar to the approach taken in other directives such as MiFID and UCITS. However, a key difference is that the investor must be given the choice between paper and other durable medium or website and their explicit choice of the durable medium or website must be recorded in a way that can be evidenced later. This highlights the importance of being able to evidence at a future date any choices that the retail investor may make. Remember that paper is the default option in the context of face-to-face business unless the investor agrees otherwise.

Manufacturers may need to revisit arrangements with distributors to ensure that the processes for the supply of the latest KID are appropriate and effective.

PART E: MISCELLANEOUS

Q.21: We have heard that a postponement is possible: is that right?

It is true that a number of banking, insurance and asset management industry associations, including EFAMA, EUSIPA and Insurance Europe, have been lobbying hard over recent months for a postponement of the PRIIPS Regulation. However, in May 2016 the European Commission flatly rejected the formal request for a postponement.

Industry lobbying continues, but changing the implementation date is itself a complex and time-consuming process which may suggest that there is less chance that the deadline, which is enshrined in the Level 1 PRIIPS Regulation, will change.

It is also true that the process of agreeing the Level 2 RTS may be running into difficulties with possible objections from the European Parliament; these may threaten agreement of the legislation by the 31 December 2016 deadline. Even if the RTS are agreed in time, it may be getting uncomfortably close to the implementation date before we see the final adopted text.

For firms, therefore, there is still a great deal of uncertainty. Q&As from the ESAs were planned for issue "during the summer" to assist firms in interpreting the requirements and their preparation for implementation – but it will not be long before summer slips into autumn and, as of the date of this briefing, nothing has yet appeared.

Firms should watch events closely.

However, importantly, neither Brexit nor any talk of possible postponement of the PRIIPS requirements nor the current lack of guidance should stop firms from preparing in earnest for the December deadline.

Q.22: Where do I find the various materials relating to the PRIIPS regulation?

Click on the following links:

- the [PRIIPS Regulation \(Regulation \(EU\) No 1286/2014\)](#)
- the [final draft RTS from the ESAs](#) – we are still currently awaiting the final adoption of these (see Q.21) above
- [MiFID II](#) (for the purposes of the definition "professional client" (see Annex II) and "structured deposit" (see Article 4(1), point (43))
- the [Insurance Mediation Directive](#) (for the purposes of the definition of "customers", which will be retail investors where they would not qualify as professional clients under MiFID II)
- [FCA webpage on PRIIPS disclosure: Key Information Documents](#)
- [FCA CP16/18: Changes to disclosure rules in the FCA Handbook to reflect the direct application of the PRIIPS Regulation](#)

As indicated in the answer to Q.21, firms should keep an eye out for publication of the ESAs' Q&As and finalisation of the RTS.

HOW WE CAN HELP YOU FIND THE ANSWERS

We advise both retail and wholesale fund managers in how to comply with the increasing complexities of EU and UK legislation and have a depth of experience in relation to the marketing of funds, including UCITS, private equity, hedge, credit and other alternative investment funds. We can help in analysing whether any of their funds or other products are "PRIIPS" within the scope of the Regulation and, if so, how firms should go about ensuring that they are compliant by the end of this year.

Because of the complexity of the legislation and the scope of the manufacturer's liability for any shortcomings in the PRIIP, firms cannot afford to ignore this or get it wrong.

TRAVERS SMITH

FOR FURTHER INFORMATION, PLEASE CONTACT

10 Snow Hill
London EC1A 2AL
T: +44 (0)20 7295 3000
F: +44 (0)20 7295 3500
www.traverssmith.com



Jane Tuckley

Partner

E: jane.tuckley@traverssmith.com
T: +44 (0)20 7295 3238



Tim Lewis

Partner

E: tim.lewis@traverssmith.com
T: +44 (0)20 7295 3321



Phil Bartram

Partner

E: phil.bartram@traverssmith.com
T: +44 (0)20 7295 3437



Stephanie Biggs

Partner

E: stephanie.biggs@traverssmith.com
T: +44 (0)20 7295 3433

APPENDIX

GLOSSARY – EU TERMINOLOGY

Term	Brief description
EEA	<p>The European Economic Area, which is currently constituted by the 28 Member States of the European Union (including, until Brexit, the UK) and three additional countries: Norway, Iceland and Liechtenstein.</p> <p>For the purpose of determining whether a manufacturer of PRIIPS is within the scope of the Regulation, the PRIIPS Regulation provides that one has to determine whether the PRIIP is "made available" to retail investors.</p> <p>In terms of scope, the Regulation uses terminology referring to Member States of the "EU". However, in this briefing we have assumed that, in due course, the PRIIPS Regulation will be adopted by Norway, Iceland and Liechtenstein pursuant to the EEA Agreement (a process under which EU single market financial services legislation extends to those countries) and that, therefore, references in the Regulation to "EU" should be read as referring to "EEA".</p> <p>The issue is therefore whether a PRIIP is made to retail investors in the wider EEA.</p>
ESAs	<p>The three European Supervisory Authorities:</p> <ul style="list-style-type: none"> • the European Securities and Markets Association (ESMA); • the European Banking Authority (EBA); • the European Insurance and Occupational Pensions Authority (EIOPA). <p>The object of the ESAs is to improve the functioning of the internal market by ensuring appropriate, efficient and harmonised EU regulation and supervision. Amongst other things they are responsible for developing Level 2 measures for consideration by the European Commission (see below).</p>
Level 1	<p>A four-level procedure for the development of all EU legislation for financial services applies.</p> <p>"Level 1" describes the primary EU act: the Level 1 act sets out the framework legislation governing a particular matter. Certain provisions within the Level 1 act will specify where power is delegated to the European Commission to adopt Level 2 measures (see below), to supplement the Level 1 measures.</p> <p>The Level 1 act may be adopted as a Directive or a Regulation (see below).</p> <p>The PRIIPS Regulation itself is a Level 1 act.</p>
Level 2	<p>"Level 2" measures are referred to as "implementing measures" – they supplement the framework Level 1 measure with more detailed measures. There are different technical processes which determine how Level 2 measures end up being adopted by the European Commission. Level 2 measures include RTS and ITS.</p> <p>In the case of the PRIIPS Regulation, the relevant Level 2 implementing legislation is an RTS (currently in final draft form).</p>
MiFID II	<p>The revised Markets in Financial Instruments Directive (Directive 2014/65/EU) – this will, from 3 January 2018, replace MiFID I (2004/39/EC) as regards the regulation of trading venues and investment firms.</p> <p>MiFID II is relevant for the purposes of determining what a "retail investor" is under the PRIIPS Regulation: it has the same meaning as "retail client" under MiFID II, which means any client that is not a "professional client". MiFID II also defines what a "structured product" is.</p>

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Regulation	<p>In contrast to a Directive (which requires Member States to pass legislation implementing the provisions into national law) an EU Regulation is directly applicable in each of the Member States of the EU without requiring any such transposition.</p> <p>This is the case with the PRIIPS Regulation and the RTS – neither of these measures will therefore require any UK domestic legislation in order to become law.</p>
RTS and ITS	<p>Where the relevant Level 2 measures concern purely technical matters which require the input of supervisory experts, the Level 1 act will determine that such measures should be implemented by way of binding technical standards, based on drafts developed by one or more of the ESAs.</p> <p>An RTS is a "regulatory technical standard", which is adopted by the Commission by way of a delegated act.</p> <p>An ITS is an "implementing technical standard" which is adopted by way of an implementing act.</p> <p>Aside from a different process of implementation, RTS are used to supplement the Level 1 framework act with further detail whereas ITS are used to provide more granular, technical details where the Level 1 act calls for these - ITS are often used for prescribing templates, standard forms and procedures.</p> <p>In the case of the PRIIPS Regulation, the relevant Level 2 technical measures take the form of RTS. In respect of these, the three ESAs were mandated to prepare draft RTS including, amongst other things</p> <ul style="list-style-type: none">• the details of the presentation of each of the elements of information required by the Regulation;• the methodology underpinning the presentation of the risk and reward profile – with respect to the summary risk indicator and appropriate performance scenarios;• the methodology for the calculation of costs. <p>All three ESAs, acting through a joint committee, were mandated to provide the drafting in this case because the PRIIPS Regulation is cross-sectorial and applies to a wide range of products across the banking, investment, insurance and pensions sectors.</p>
UCITS KII Regime	<p>Under the UCITS Directive, UCITS managers are currently required to publish Key Investor Information in accordance with a prescribed template containing similar (but not identical) information to that required by the PRIIPS Regulation.</p>