

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular to the financial services industry on the issue of the PRIIPS Regulation

The Authority would like to draw the attention of the financial services industry to the publication of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of the 26 November 2014 on key information for packaged retail and insurance-based investment products (PRIIPS), hereinafter referred to as the ‘PRIIPS Regulation’.

This Regulation, may be accessed at the following [link](#). It has been published in the Official Journal of the European Union on the 9th December, 2014 but shall apply as from the 31st December 2016.

What are PRIIPS?

The term PRIIPS essentially encompasses any investment product that is in a packaged form. In order to be in a ‘packaged’ form, a product must either be wrapped or bundled or have other mechanisms that alter an investment in the product compared to a direct holding in the underlying assets. It also includes such products issued by SPVs.

PRIIPs includes investment funds (whether closed-ended or open-ended including UCITS); all structured products, whatever their form (e.g. packaged as insurance policies, funds, securities or banking products); insurance products whose surrender values are determined indirectly by returns on the insurance company’s own investments or even the profitability of the insurance company itself (e.g. with-profits); as well as derivative investments. Structured deposits (as defined in MiFID II) also fall within the definition.

Products that are **not** PRIIPs include the following:

- products where the precise rate of return is set in advance for the entire life of the product;
- basic banking products that contain no element of packaging such as deposit accounts (which are not structured);
- plain shares and bonds (where there is a direct holding of the relevant assets);
- insurance products that only offer insurance benefits, such as pure protection or non-life insurance (where the surrender value is not dependent on fluctuations in the performance of one or more underlying assets or reference values);

- various pension schemes, such as occupational pension schemes and certain other employment based pension schemes which are mandatorily required by national law (e.g. auto enrolled schemes).

What is Required under the PRIIPS Regulation?

The PRIIPS Regulation requires the manufacturers of PRIIPS or the remanufacturer thereof (e.g. where a financial intermediary substantively changes the risk or cost structure of an existing investment product) to prepare a Key Information Document ('KID'). Moreover, persons advising on, or selling a PRIIP are required to provide retail investors with the KID in good time before those retail investors are bound by any contract or offer relating to that PRIIP. This document should be made available on to retail investors and made available on the website of the manufacturer or remanufacturer of the product to which it relates.

The form of the KID is prescribed in the Regulation. It must be a short document (no more than 3 sides of A4 sized paper), written in a concise manner, using non-technical language that avoids jargon so as to be understandable by the average retail investor, drawn up in a common format, completely standalone and distinct from other marketing material. It must be written in the official language (or one of the official languages) of the Member State where the PRIIP is being sold.

The essential information to be included in a KID is the identity of the product and its manufacturer, the nature and main features of the product (including whether the investor might lose capital), its risk and reward profile, costs, and past performance (where applicable), any applicable compensation or guarantee schemes and then other information necessary for specific products. For complex PRIIPs, a "comprehension alert" is to be included in the KID (namely that the investor is about to buy a complex product which may be difficult to understand). All information is to be kept at a minimum to avoid the KID being too lengthy. The sequence of sections of the KID is also prescribed in the Regulation, to encourage comparability.

Level 2 measures which will be issued by the EU Commission shall prescribe the exact wording, sections, format, of the KID including disclosures of risks and costs for specific types of PRIIPs.

The Regulation also provides that non-compliance with its requirements would be subject to sanctions.

Relationship with the UCITS Directive

Given that currently Management Companies, UCITS and persons advising on, or selling, units of UCITS are currently required to provide a KIID under the requirements of the UCITS Directive, these entities are exempt from the obligations of the PRIIPS Regulation until 31 December 2019.

By this time, the EU Commission shall effect a review of the PRIIPs Regulation which shall assess, inter alia, whether the above derogation should be prolonged or whether following the identification of any necessary adjustments, the provisions on the Key Investor Document under the UCITS Directive should be replaced by, or considered to be equivalent to the KID under the PRIIPS Regulation.

Issue of Regulatory Technical Standards

The PRIIPS Regulation empowers the three European Supervisory Authorities ('ESAs'), namely ESMA, EIOPA and EBA to prepare draft Regulatory Technical Standards (RTS) in specific areas.

These RTSs will contain detailed rules on the contents and presentation of the Key Information Documents, including calculation methodologies and presentation templates necessary for a summary risk indicator, performance scenarios, and cost disclosures. The measures should be designed help retail investors better understand and compare the many different products that fall within the scope of the PRIIPs Regulation.

In the light of the above, the ESAs have issued a Discussion Paper on the 17th November, 2014 to which any interested stakeholders are invited to provide feedback by the 17th February, 2015. This discussion paper may be accessed at the following link: http://www.esma.europa.eu/system/files/jc_dp_2014_02_-_priips_discussion_paper.pdf

Any comments to made to this Discussion Paper should be passed directly to the ESAs as indicated in the Discussion Paper itself.

Contacts

Should you have any queries with respect to the above, please do not hesitate to contact Dr. Michelle Mizzi Buontempo, Director, Conduct Supervisory Unit (mmizzibuontempo@mfsa.com.mt) or Dr. Sarah Pulis, Analyst, Conduct Supervisory Unit (spulis@mfsa.com.mt).

Communications Unit
03 February 2015