

PRIIPs FRAMEWORK QUESTIONS CONCERNING IMPLEMENTATION AND INTERPRETATION

Guidance

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) set an application date of 31 December 2016. However, because of the delay in adopting implementing measures, the European Commission finally proposed on 9 November 2016 to postpone the application date by one year, to 1 January 2018. The postponement was made official on 14 December 2016 by Regulation (EU) 2016/2340 of European Parliament and of the Council of 14 December 2016 amending PRIIPs.

Progress on PRIIPs

On 14 September 2016, the European Parliament exercised its right of objection and rejected the delegated regulation published on 30 June 2016 by the European Commission based on joint RTS proposals from the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), referred to below as the European Supervisory Authorities (ESAs).

At that time, the Parliament asked the Commission to submit a new delegated act addressing the objections, particularly concerning performance scenarios and the comprehension alert. Accordingly, on 10 November 2016, the Commission submitted proposed changes to the RTS to the ESAs for an opinion. The amendments chiefly concern multi-option PRIIPs (MOPs), the fourth scenario performance and the comprehension alert. In late 2016, however, it became evident that in addition to the emergence of new issues concerning the calculation methodology for the medium scenario, an overall consensus could not be reached within the ESAs, particularly about the comprehension alert criteria. The Commission now has to finalise an amended delegated regulation, which will also be subject to an objection period of three months for the Parliament and Council. This means that the regulation cannot be officially published in the OJEU until the second quarter of 2017 at the earliest.

PRIIPs requires anyone who provides retail investors with investment products whose performance depends on underlying assets (PRIIP) to prepare a key information document (KID) for these investors. The aim is to make it possible to compare products, regardless of their "nationality" or legal "wrapper", by providing investors with all the information needed to take informed decisions (risk indicator, performances, costs, etc.) in a single document (the KID).

AMAFI has been doing work in recent months to help its members with the adjustments required by the entry into application of PRIIPs. Efforts are being hindered by the fact that the delegated regulation has not been published, but even so, the work has provided an opportunity to identify points requiring particular attention in terms of implementing or interpreting PRIIPs.

Drawing on the existing legislation and discussions within the AMAFI working group, this document is intended to provide members with guidance to help them respond to certain questions that they may encounter when implementing the new framework. Consistent with the tasks assigned to AMAFI, the questions considered here are explored solely from the angle of products that its members may market in their capacity as investment services providers (ISPs). Accordingly, the guidance does not address questions linked to products marketed by collective investment schemes and insurers, even if products provided by ISPs may be embedded within such products. By the same token, the guidance does not address equity-linked products¹; in fact, AMAFI is currently holding separate discussions on application of PRIIPs to such products.

This guidance is designed to evolve, particularly the parts based on elements that are not yet officially part of the regulatory corpus. On this point, the delegated regulation needs to be considered carefully, keeping in mind that a large proportion of the provisions contained in the regulation published on 30 June 2016 are expected to remain as they are. The guidance gathered here may therefore be extended or amended depending on progress in the discussions, and particularly to reflect information provided by the European Commission, ESMA, EBA, EIOPA or the AMF. This document is also intended to incorporate new questions as they are brought to the attention of the Association.

DISCLAIMER

Readers are reminded that the sole purpose of this document is to share with members the discussions conducted within AMAFI's committees and working groups on the questions raised by implementation of PRIIPs.

Although it draws on discussions with AMF personnel, it has not been approved by the Authority. The guidance contained here must therefore be treated with care at all times. Under no circumstances may AMAFI be held liable for this guidance.

In particular, readers should be aware that the European Commission may shortly publish a set of FAQ offering guidance on PRIIPs provisions. This document may therefore be amended quickly to reflect these elements.

¹ Such as convertible bonds, exchangeable bonds, redeemable bonds, bonds that may be converted into new or existing shares, and equity warrants.

The following abbreviations are used in the remainder of the document:

- **PRIIPs**: 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;
- **RTS**: Final draft regulatory technical standards with regard to presentation, content, review and provision of the key information document, including the methodologies underpinning the risk, reward and costs information in accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council dated 31 March 2016;
- **PRIIPs DR**: Commission Delegated Regulation of 30 June 2016 supplementing 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;
- **KID**: Key information document;
- **Manufacturer**: The person subject to the obligation to draw up the KID, as defined in the Answer to Question I.2;
- **EC workshop**: Workshop organised by the Commission on 11 July 2016 during which some unofficial guidance was provided;
- **SRI**: Summary risk indicator with an alphanumeric scale from 1 to 7 reflecting the product's risk level (*PRIIPs DR, Art. 3-2-(a)*);
- **MiFID 2**: 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.

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I. DEFINITIONS

1.1. What is a retail client?

Answer: The definition of a "retail client" is provided in Article 4.6 of PRIIPs, which refers back to the definition of a retail client provided for by MiFID 2.

MiFID 2 states that a retail client is a "*client who is not a professional client*", i.e. a client who does not possess the "*experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs*".

The following entities are therefore regarded as professionals by nature:

- Entities which are required to be authorised or regulated to operate in the financial markets; and
- Undertakings meeting at least two of the following criteria on a company basis:
 - Balance sheet total of at least EUR 20,000,000;
 - Net turnover of at least EUR 40,000,000;
 - Own funds of at least EUR 2,000,000.

Persons not meeting these criteria are therefore regarded as "retail clients". This goes for individuals or legal entities who do not satisfy the criteria set out above.

However, MiFID 2 provides an opt-in / opt-out system allowing a client regarded as a retail client to ask to be treated as a professional client and allowing a professional client to request the treatment reserved for non-professionals. Each individual ISP may choose whether to agree to this request, with the result that the same client may be in different categories for different ISPs, investment services and even financial instruments.

For this reason, AMAFI feels that, as regards PRIIPs application, ISPs need to apply these provisions, agreeing to or refusing the opt-in / opt-out requests made by investors to whom they market PRIIPs (*on this point, see also Question 2.1. below*).

1.2. Who is the PRIIP Manufacturer and, as such, responsible for drawing up the KID?

Answer: The KID must be drawn up by "*PRIIP Manufacturers*" (*PRIIPs, Art. 1*). PRIIPs defines the manufacturer as "*any entity that manufactures*" PRIIPs but also any 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*" (*PRIIPs, Art. 4.4*).

1.3. What does it mean to say that a PRIIP is "made available" to retail investors?

Answer: PRIIPs makes it mandatory to draw up a KID before the product is "made available" to retail investors (*PRIIPs, Art. 5*). How is the notion of "made available" to be interpreted?

AMAFI believes it should be interpreted as meaning that retail investors have the opportunity to invest in the product. Conversely, disinvestment from a PRIIP by an investor does not qualify as making the product available. The only situation where this could be the case would be if there were a secondary market transaction between a "selling" investor and a "buying" investor, as the product would be "made available" to the latter.

The fact that an ISP is making a secondary market in a PRIIP by offering investors prices for redemption only ("bid only") does not require that provider to draw up a KID. This analysis was corroborated at the EC workshop, with the European Commission specifying that the obligation to draw up a KID ceases in a situation where Manufacturers offer prices for redemption only².

1.4. When does the obligation to provide a KID cease?

In view of the above analysis (*see 1.3 above*), two situations may arise, based on the nature of the products involved:

(1) Securities (warrants, certificates, notes)

Here, AMAFI believes a distinction needs to be drawn between:

(i) market products offered on an ongoing basis, which would be regarded as continually made available to investors and thus subject to the obligation to draw up or republish a KID, even if they were issued before the entry into application of PRIIPs (i.e. in the absence of a grandfathering clause); and,

(ii) products that are made available to investors for a time-limited marketing period. Once the marketing period is over, the product is no longer made available but may be redeemed only by the issuer at the investor's request, i.e. on a bid only basis. In this case, the obligation to prepare a KID ceases at the end of the marketing period.

(2) OTC products (options, forwards, CFDs)

An OTC product is sold to the client on the basis of a buy/sell transaction conducted over-the-counter between the intermediary and its client. It may be considered as being "made available" to the investor only within the framework of this transaction. The Manufacturer is therefore required to provide a KID only within the framework of this single transaction.

² [Cross-cutting PRIIPs KID RTS Questions](#), European Commission, Brussels, 11 July 2016, "Q3: Which are typical examples where the manufacturer's KID obligation ceases? [...] Manufacturer offers price for redemption only" (f).

II. DRAWING UP THE KID

2.1. What language should be used to draw up the KID?

Answer: PRIIPs states that the KID should be written in the language of the country in which it is distributed. If the country has several official languages, the KID may be written in just one of those languages (*PRIIPs, Art. 7*).

This obligation may affect the widely used practice for some products, particularly OTC products, of communicating exclusively in English. This situation may be even less appropriate because, as mentioned earlier (*see Question 1.1 above*), the retail clients required to receive this protection do not only include individual clients but also corporate clients for which communication in English is the norm.

Note however that at the EC Workshop, the European Commission mentioned the possibility that this difficulty might be addressed by leaving each national regulator to establish exemptions on this point³.

2.2. How should the Competent Authority named in the KID be identified?

Answer: Two sets of factors need to be taken into account.

The first suggests that the Competent Authority should be that of the Manufacturer's home Member State. After all, PRIIPs states that the KID should contain "*information about the competent authority of the PRIIP Manufacturer*" (*PRIIPs, Art. 8.3 (a)*). Moreover, "competent authorities" means "*the national authorities designated by a Member State to supervise the requirements this Regulation places on PRIIP manufacturers and the persons advising on, or selling, the PRIIP*" (*PRIIPs, Art. 4.8*). Meanwhile, the PRIIPs DR speaks about "*the competent authority responsible for the supervision of the PRIIP Manufacturer in relation to the key information document*" (*PRIIPs DR, Art. 1 (d)*).

A second set of factors, however, suggests that the Competent Authority of the Member State where the PRIIP is marketed should be named⁴. The above points need to be considered with regard to Recital 24 of PRIIPs, which states that the regulation "*does not introduce a passport allowing for the cross-border sale or marketing of PRIIPs to retail investors, or alter existing passport arrangements for the cross-border sale or marketing of PRIIPs, if any. This Regulation does not alter the allocation of responsibilities between existing competent authorities under existing passport arrangements*". The same recital also states that "*the competent authority of the Member State where the PRIIP is marketed should be responsible for supervision of the marketing of that PRIIP*".

This question of which Competent Authority to name (home State of the Manufacturer or State in which the product is marketed) needs to be settled unambiguously at European level by the ESAs acting jointly. Different analyses by the various Member States must be avoided.

Furthermore, in the specific case of France, the AMF and the ACPR both have competence over the marketing of products that could give rise to a KID. Accordingly, it is also important that they determine which authority should be named for which types of products.

³ Although PRIIPs does not appear to leave open such a possibility, it should be borne in mind that the obligation to make a KID available applies only when dealing with retail clients. Yet the client classifications established by MiFID 1 and MiFID 2 are neither immutable nor totally binary. For one thing, provided the financial institution agrees, the client is entitled to use opt-in and opt-out mechanisms. For another, and while it may not be common practice, there is nothing to prevent clients from being classified according to a services / products matrix. Both of these points may be used as arguments for an exemption of the kind mentioned by the European Commission.

⁴ With the consequence that for each Member State where the product is marketed, a specific KID might have to be produced indicating the responsible Competent Authority.

2.3. How is the "target market" defined?

Answer: The "description of the type of retail investor" targeted by the PRIIP (the "target market") is defined as the type of retail investor "to whom the PRIIP is intended to be marketed, in particular in terms of the ability to bear investment loss and the investment horizon" (PRIIPs, Art. 8.3. (c.) iii).

The Level 2 measures also specify that the target market description should cover the "needs, characteristics and objectives" of the type of client for whom the PRIIP is compatible (PRIIPs DR, Art. 2.3).

Ultimately, the type of retail investor targeted by the PRIIP should be defined based on the investor's:

- ability to bear losses;
- investment horizon;
- needs;
- characteristics; and,
- objectives.

While some of these criteria recall those of the MiFID 2 target market, AMAFI feels that in the absence of an explicit link between the directive and PRIIPs to tie together the different notions of "target market" employed by the two pieces of legislation⁵, it cannot be deduced from this that there is any obligation to apply MiFID 2 target market criteria to PRIIPs.

2.4. How should the investment horizon be identified in the KID?

Answer: As regards the investment horizon specifically, the question arises as to how it should be precisely identified in the KID. AMAFI feels that two criteria may be used:

- (1) A qualitative classification in the form of a [long / medium / short]-term table with a corresponding number scale⁶; or
- (2) Information about the remaining time to maturity in months or years.

The first proposal looks to be in line with current practice and enjoys support from other participants in Europe. It may also be the one used for identification of the target market as provided for by MiFID 2.

In a situation where the KID is reviewed (see Question 3.1 below), the indicated investment horizon will need to be revised based on the remaining life of the PRIIP as at the review date.

2.5. How should the obligation to indicate a recommended holding period be applied?

Answer: PRIIPs requires the KID to have a section titled "How long should I hold it and can I take my money out early?" (PRIIPs DR, Art. 6), which should include "a brief description of the reasons for the selection of the recommended [...] holding period" (PRIIPs DR, Art. 6(a)).

AMAFI believes that four situations may be distinguished:

⁵ Especially considering that when PRIIPs defines what is meant by a "retail investor" (PRIIPs, Art. 4.2), it does refer explicitly to MiFID 2 (see Question 1.1). This suggests that had the regulators wanted to align PRIIPs and MiFID 2 rules on the question of the target market, they would have included an explicit reference to MiFID 2.

⁶ Work is currently being done on the nature of this number scale. A forthcoming update of this Q&A will address this point.

- (1) Products designed to be held to maturity: The recommended holding period necessarily corresponds to the product's maturity, where it has one and assuming this is economically relevant, including, where applicable, from the client's perspective.
- (2) Open-ended products⁷: PRIIPs requires a recommended holding period to be indicated, but it is hard to meet this obligation with these products. To provide the client with useful and non-misleading information, an average observed holding period may be indicated and accompanied by a narrative explanation about the lack of a recommended holding period and the purely statistical nature of the guidance provided.
- (3) Securities (warrants and certificates): Here again it is hard to comply with the obligation to indicate a recommended holding period, since the economic value to the client is directly linked to the performance of the underlying assets and the client's own needs (return or hedge). To provide the client with useful and non-misleading information, the security's maturity may be indicated and accompanied by a narrative explanation about how the specific nature of the product makes it impossible to recommend an optimal holding period.

As an example, the narrative explanation could be worded as follows: "*The characteristics of this product make it impossible to provide a recommended holding period. Given its leverage, the product responds to all price fluctuations affecting the underlying asset, including even the tiniest changes. This may result in gains or losses at unpredictable times. Any recommendation as to a holding period would therefore constitute misleading information for an investor with return requirements. For investors with hedging requirements, the holding period shall depend on the period during which the hedge is needed*".

By the same token, since the performance scenarios are partly based on the recommended holding period, for products where this is not relevant (cited above), a similar warning could be inserted in the section of the KID relating to the presentation of performance scenarios in order to improve the transparency of information for investors.

- (4) Other products: each individual ISP is required to conduct an analysis to determine the recommended holding period.

The approach developed here is merely a general framework that each ISP should use to conduct a specific assessment with regard to the PRIIPs that it manufactures, making adjustments as needed.

2.6. What unit should performance scenarios be expressed in?

Answer: Performance scenarios should be expressed both:

- in currency terms, i.e. "€10,000 (for all PRIIPs except regular premium insurance-based investment products), or €1,000 yearly (for regular premium insurance-based investment products) during different holding periods, including the recommended holding period." (PRIIPs DR, Annex VI 90); and
- in percentage terms "as the average annual return of the investment. That figure shall be calculated considering net performance as numerator and the initial investment amount or the price paid as denominator" (PRIIPs DR, Annex IV 27).

⁷ Financial products with no fixed maturity.

2.7. What conditions must be met for a PRIIP to be regarded as liquid and, therefore, for a "liquidity warning" not to be required in the KID?

Answer: A warning must be prepared if the product presents a "*materially relevant liquidity risk*" or if it is illiquid (*PRIIPs DR, Art.3.2.(b)*). This warning should be included just after the synthetic risk indicator (SRI) (*PRIIPs DR, Annex III*).

When is this warning required?

Level 2 measures (*PRIIPs DR, Annex II, Part 4, § 56*) state that a product is considered to be liquid when the following cumulative criteria are met:

- The PRIIP is traded on a secondary market (regulated market or MTF); and
- The issuer or a market maker has made a firm commitment to ensure regular trading in the product at all times (by means of a liquidity agreement⁸ for example), it being understood that these written agreements must ensure regular trading in the PRIIP at all times.

A PRIIP meeting these criteria is considered to be liquid and there is no need to provide a liquidity warning.

Conversely, a product that meets one of the following criteria is regarded as illiquid (*PRIIPs DR, Annex II, Part 4, 57*):

- The PRIIP is not admitted to trading on a secondary market;
- No alternative liquidity facility is promoted by the Manufacturer or a third party, or the alternative liquidity facility is subject to significant limiting conditions, including significant early exit penalties or discretionary redemption prices, or where there is an absence of liquidity arrangements (*see above*);
- The PRIIP offers potential early exit or redemption possibilities prior to the applicable maturity, but these are subject to significant limiting conditions, including significant exit penalties or discretionary redemption prices, or to the prior consent and discretion of the PRIIP manufacturer;
- The PRIIP does not offer potential early exit or redemption possibilities prior to the applicable maturity.

In such cases, the following warning needs to be added: "*This product **cannot be** cashed in. This means it is difficult to estimate how much you would get back if you cash in before [the recommended holding period/maturity]. You will either be unable to cash in early or you will have to pay high costs or make a large loss if you do so*" (*PRIIPs DR, Annex V, Part 2, [Element D]*).

Products that do not meet the definitions for a liquid or illiquid PRIIP are regarded as having a "materially relevant liquidity risk". In this case, the following warning should be inserted: "*This product **cannot be easily** cashed in. This means it is difficult to estimate how much you would get back if you cash in before [the recommended holding period/maturity]. You may be unable to cash in early or you may have to pay high costs or make a large loss if you do so*". (*PRIIPs DR, Annex V, Part 2, [Element D]*).

⁸ A liquidity agreement means any commitment that is binding on the Manufacturer and that the PRIIP holder may avail itself of. Obviously, this commitment must comply with the requirements laid out in the legislation by ensuring regular trading in the product at all times.

III. KID REVIEW

3.1. On what basis (or bases) is the obligation to "review" the KID triggered? How should the expression "*change that is likely to significantly affect the information contained in the key information document*" be interpreted?

Answer: PRIIPs states that the KID should be reviewed at least every year and "*every time there is a change that significantly affects or is likely to significantly affect the information contained in the key information document*" (*PRIIPs DR, Art. 15.1*).

(i) What is a "significant" change?

A reading of the Level 1 and 2 PRIIPs measures reveals that three product characteristics are highlighted, namely SRI class, performance scenarios and product-related costs. However, just two types of changes are identified "*in particular*" as significant: a change in SRI class (*PRIIPs DR, Art. 15.2 (b)*) and a more than 5% change in performance scenario (*PRIIPs DR, Art. 15.2 (c)*). Although it may be pointed out that a cost-related change is not identified as a significant change, these situations are not exhaustive.

In other situations, AMAFI believes that a change could be considered as "significant" whenever there is a change to a product's underlying assets or if there is an event that significantly affects the risk associated with the product, even if this event does not lead to a change in SRI class.

For example, a security transaction that significantly affects the description of the underlying asset or a change in the issuer's credit rating (even one that does not result in a change in SRI class, which is already covered by Article 15.2 (b) of PRIIPs DR) might be considered as significant. The triggering of certain mechanisms might also be considered as events that significantly affect the description of the underlying asset (particularly if the mechanism alters the nature of the product or its risk/reward profile). Conversely, a simple change or the triggering of other mechanisms that are intrinsic to the product (such as coupon payments) do not have to be regarded as significant changes. They constitute events that are inherent to the life of the product.

(ii) Does PRIIPs require KIDs to be updated in real time?

There is no obligation to update KIDs in real time. This was confirmed at the EC Workshop⁹.

(iii) Procedures for updating KIDs

KID updates may involve changes to two types of data: quantitative data and/or qualitative or descriptive data. Since the European texts do not clarify this issue, AMAFI believes that KIDs should be republished according to the following procedures:

- In a situation where the changes involve quantitative data, to make the document more reader-friendly, the new KID should incorporate the new data by replacing and deleting the obsolete data without specifically indicating this;
- In the case of qualitative and descriptive data, and particularly information appearing in the product description section, the new KID should include a narrative covering the nature of the significant event and when it occurred (for example, if the issuer is downgraded, information should be included stating that the issuer's rating was downgraded and when it happened). The narrative does not necessarily have to be changed as long as the data provided to the investor remain accurate, clear and non-misleading.

⁹ [Cross-cutting PRIIPs KID RTS Questions](#) mentioned above, "Q6: Revision: KIDs on Demand? The RTS do not require KIDs to be produced on demand or in real time, e.g. on an intra-day basis."

3.2. Does a new KID have to be issued every time the SRI changes or if the new SRI persists beyond a certain period?

Answer: AMAFI notes that in a situation where changes in SRI class may be frequent the question arises as to whether the KID needs to be republished every time.

If there are very frequent changes, this begs the question of whether the change is sufficiently stable to make updating the KID relevant.

The ESAs clearly recognise this issue and said in their document accompanying the RTS: "(...) whereby a movement between SRI categories related to market risk must persist for at least four months before it is to be counted as a permanent change triggering a revision and republication of the KID. Shorter term movements would not require republication. Changes related to credit risk would however always require revision and republication of the KID."¹⁰

This is an important assessment: overly frequent changes would interfere with the PRIIPs objective of ensuring that the KID is understandable to investors. Accordingly, and as proposed by the ESAs, AMAFI believes that changes must persist for four months before triggering republication of the KID (*RTS, Policy issue 3, Option 3.2, p. 126*).

IV. KID PROVISION AND ARCHIVING

4.1. How should the KID and its updates be provided?

(i) Procedures used to provide the KID and updates

Answer: PRIIPs states that the KID shall be provided free of charge before the PRIIP is made available (*PRIIPs, Art. 5.1, and 14.1*).

The revised KID shall be made available promptly (*PRIIPs, Art. 10.1*) and, like the original version, may be made available on the Manufacturer's website (*PRIIPs, Art. 14.2 (c) and 14.5*).

This raises the question of whether an updated KID published on a website needs to be accompanied by a notification telling the client about the new publication. Although no PRIIPs provision contains such an obligation, Recital 22 of the PRIIPs DR, which does not have binding force, confirms that Manufacturers are not obliged but merely recommended to provide notification, stating "(...) Where possible, the PRIIP manufacturer should inform retail investors when the key investor documents have been revised, for example by means of mailing lists or email alerts".

Since it is not always possible to have warning lists that cover all concerned investors reliably, AMAFI believes that one way to address this concern might be to specify, when providing the original KID, the procedures for making updated KIDs available, for example by indicating the address of the website where they will be available. If the PRIIP is marketed through distributors, the Manufacturer could agree with them that updated KIDs will be made available to them on shared information systems, i.e. a network through which the Manufacturer and distributor share documents.

¹⁰ [Cross-cutting PRIIPs KID RTS Questions](#) mentioned above.

(ii) Do KIDs have to be published on a public website?

Answer: Publishing a KID on the Manufacturer's public website might breach the applicable public offering rules if the product was marketed through a private placement.

Insofar as PRIIPs does not appear to require the KID to be provided on a public website, AMAFI feels that a reserved website may be used provided it is directly or indirectly accessible to all those for whom the KID is intended¹¹.

4.2. Is there an obligation to archive the KID, its updates and the data used to prepare the document and keep it current?

Answer: PRIIPs does not stipulate any particular archiving obligation. A distinction needs to be drawn between:

- Archiving of the KIDs themselves and any modifications, which should be kept for five years consistent with the record-keeping obligation under MiFID 2;
- As regards the data used as the basis to prepare the KID, each individual ISP should assess the need to archive such data, and for how long, assuming this information is not required to be kept under other statutory or regulatory provisions.

V. IDENTIFICATION OF THE "MANUFACTURER"

5.1. If the Manufacturer "sells" its product to an investment manager, is it required to provide a KID to the manager?

Answer: An investment manager is a person whose (regulated) activity consists in taking investment decisions on behalf of the mandates or portfolios whose management has been entrusted to it ("discretionary management"). The Manufacturer deals with that manager alone. If the manager is considered to be a professional investor (see also Question 1.1. above), the Manufacturer is not required to provide it with a KID.

This interpretation was upheld by the European Commission at the EC Workshop¹².

In some cases, a "manager" does not provide a management service, but an advisory service, by telling client investors about investment or disinvestment opportunities. Based on this advice, the client takes his own decisions and buys the product directly from the Manufacturer. This type of service is often referred to as "advisory management" whereas it actually constitutes investment advice. However, it may not be considered that a KID is not required. If the client is retail investor, the Manufacturer must provide a KID.

¹¹ The republished KID must be available to all the retail investors. If it is not directly accessible on a dedicated website of the Manufacturer, it may nevertheless be indirectly accessible by means of a firm commitment by distributors to make the new KID available to "their" investors as soon as it is published by the Manufacturer.

¹² [Cross-cutting PRIIPs KID RTS Questions](#) mentioned above, "Q1: What are typical examples where there is no KID obligation? (...) PRIIPs bought and sold by a portfolio manager, including in the name and for the account of a retail investor."

5.2. Regarding OTC derivatives: who is the PRIIP Manufacturer and accordingly obliged to prepare and update the KID?

Answer: As seen above (*see Question 1.4.*), an OTC derivative is a unique PRIIP "sold" to the client on the basis of a contract concluded over the counter between a counterparty and its client. It may be considered as being "made available" to the investor solely within the framework of this transaction.

While the counterparty to the retail client in the transaction must provide a KID to its client at the time of the transaction, it is not under any obligation to update the KID because this obligation ceases once the transaction has been executed.

By the same token, if the counterparty ("A") to the retail client backs the product provided to the client by a similar contract representing an economically opposite position and entered into with another professional ("P"), P is not under any obligation to provide a KID to the retail client. This is because legally speaking it is not the same product (unlike in the case of securities), if only because the credit risk does not relate to the same entity. It is therefore A, not P, that must provide a KID to the retail client. Furthermore, since A is a professional client, P is under no obligation to provide it with a KID.

5.3. Regarding listed derivatives: who is the PRIIP Manufacturer and accordingly obliged to prepare and update the KID?

Answer: Derivatives traded on market venues are created by the undertakings that operate the venues. These operators are therefore the ones that make the products available to investors. Accordingly, and in line with the guidance provided above (*see Question 1.2.*), the market operators are the Manufacturers and, as such, must draw up KIDs.

5.4. Regarding convertible bonds: who is the PRIIP Manufacturer and accordingly obliged to prepare and update the KID?

Answer: The issuer of a convertible bond makes the bond available and is therefore considered to be the Manufacturer. As such, it is under the obligation to prepare a KID, assuming that PRIIPs applies (i.e. the product is made available to retail investors).

AMAFI notes however that in most cases these issuers are advised by an ISP and, within the framework of its advisory role, the ISP may take responsibility for drawing up the KID. While this role does not lead to the associated legal responsibility being transferred to the ISP, as responsibility continues to rest with the issuer, it would nevertheless be preferable to establish a formal contractual framework for this relationship.

