

Preparing for the PRIIPs KID for UCITS

On 1 January 2018, the PRIIPs Regulation (EU) 1286/2014¹ introduced a mandatory key information document ("PRIIPs KID") for packaged retail and insurance-based investment products ("PRIIPs"), including investment funds, which are made available to retail investors in the EEA.

As part of the next phase of the PRIIPs regime, UCITS will soon be required to produce and provide retail clients with a PRIIPs KID. This note covers some common questions UCITS management companies are raising as this new regime comes into effect.

What is a PRIIPs KID?

A PRIIPs KID is a short pre-sale disclosure document aimed at providing retail investors with the information necessary to make an informed investment decision.

Pursuant to Commission Delegated Regulation (EU) 2021/2268 ("PRIIPs KID Delegated Regulation"), a PRIIPs KID is required to contain specific key information on an investment product in a prescribed way and in a standard format that makes it simple for retail investors to assess and compare products.

The key information to be disclosed in the PRIIPs KID includes: (i) the nature and features of the product, including whether it is possible to lose capital; (ii) the costs and risk profile of the product; and (iii) relevant performance information.

The entity responsible for preparing a PRIIPs KID is known as the 'PRIIP manufacturer'

(which for a UCITS will be the UCITS management company).

Key Points to Note

UCITS are currently exempt from the PRIIPs KID requirement therefore they may continue to issue a key investor information document ("UCITS KIID") in accordance with the UCITS Directive².

Under the current timeline³, UCITS made available to retail investors in the EU will need to be able to provide a PRIIPs KID from 1 January 2023.

The European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2022⁴ provide that the production of a PRIIPs KID by a UCITS will satisfy the obligation to produce a UCITS KIID, thus avoiding duplication.

If a UCITS is not available to EU retail investors, it can still produce a UCITS KIID only.

If a UCITS operates as a reference / underlying investment to another investment product being made available to retail investors in the EU (for example, a unit linked insurance contract), the obligation to provide a PRIIPs KID rests with the manufacturer of the product sold directly to the retail investors. In practice, the product manufacturer may require support or information about the UCITS in order to produce it.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R1286>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A02009L0065-20140917>

³ Pursuant to a quickfix Commission Delegated Regulation C(2022) 1541 final which was published on 17 March 2022 it

is proposed to delay the application of the PRIIPs Level 2 RTS which are set out in the PRIIPs KID Delegated Regulation from 1 July 2022 to 1 January 2023. This is not yet in force however the European Parliament and Council of the EU are expected to endorse this proposal.

⁴ <https://www.irishstatutebook.ie/eli/2022/si/262/made/en/pdf>

UCITS KIID vs PRIIPs KID Requirements

Although there are parallels to be drawn between the UCITS KIID and the PRIIPs KID regimes there are some key differences to be considered when producing PRIIPs KIDs. These include the disclosures relating to performance data and costs and charges.

While UCITS KIIDs disclose up to 10 years' past performance, with a risk warning as to its limited value as a guide to future performance, a PRIIPs KID must include forward looking projected returns based on historic performance. Using the product's historic performance, projected returns should be shown based on performance scenarios across a range of: (a) favourable; (b) moderate; (c) unfavourable; and (d) stress.

Similar to the "Charges" section in the UCITS KIID, the PRIIPs KID must include information on costs in the "Composition of Costs" section. However, additional data will be required for the PRIIPs KID including "portfolio transaction costs" not currently factored into the UCITS KIID charges disclosure.

Further Regime Changes

Recognising the somewhat flawed nature of the existing framework, the European Supervisory Authorities ("ESAs", that is EIOPA, ESMA and the EBA) called for changes⁵ to the PRIIPs regime in April 2022. Proposed amendments include facilitating flexibility on the nature of the information to be disclosed in the performance section of the PRIIPs KID and replacing the current requirement for 'appropriate performance scenarios' to be shown for all products, with the wording 'appropriate information on performance'. The ESAs also recommend that the opportunities provided by digital disclosure should be harnessed by the European Commission and co-legislators and move the PRIIPs framework into the digital age.

⁵https://www.esma.europa.eu/sites/default/files/library/jc_2022_20_esa_advice_on_priips_regulation.pdf

However these changes will necessitate amendments to the PRIIPs Regulation and accordingly are not expected to impact UCITS prior to 1 January 2023.

How can we help?

The Maples Group is assisting UCITS and their managers with their transitional arrangements in preparation for the introduction of the PRIIPs KID.

We continue to monitor the aforementioned developments and assist clients by:

- advising on the application of the technical requirements of the PRIIPs Regulation;
- assisting with the analysis of whether or not a PRIIPs KID will be required and planning the transition to enable PRIIPs production by 1 January 2023;
- preparing disclosures for the production of PRIIPs KIDs;
- assisting with the implementation of appropriate governance and oversight frameworks of the production and maintenance of PRIIPs KID on an ongoing basis; and
- providing support in transition projects including consideration of implications for UCITS registered in other EU member states, and translation requirements.

Further Information

For further information, please liaise with your usual Maples Group contact or any of the persons listed below.

Dublin

Eimear O'Dwyer
+353 1 619 2065
eimear.odwyer@maples.com

Caitriona Carty
+353 1 619 2157
caitriona.carty@maples.com

UPDATE

Stephen Carty
+353 1 619 2023
stephen.carty@maples.com

Ian Conlon
+353 1 619 2714
ian.conlon@maples.com

Ronan Cremin
+353 1 619 2756
ronan.cremin@maples.com

John Gallagher
+353 1 619 2073
john.gallagher@maples.com

Philip Keegan
+353 1 619 2122
philip.keegan@maples.com

Deirdre McIlvenna
+353 1 619 2064
deirdre.mcilvenna@maples.com

Aaron Mulcahy
+353 1 619 2104
aaron.mulcahy@maples.com

Niamh O'Shea
+353 1 619 2722
niamh.oshea@maples.com

Emma Conaty
+353 1 619 2708
emma.conaty@maples.com

London

Adam Donoghue
+44 20 7466 1711
adam.donoghue@maples.com

Fearghal De Feu
+44 20 7466 1714
fearghal.defeu@maples.com

Cayman Islands

Pádraig Brosnan
+1 345 814 5441
padraig.brosnan@maples.com

Hong Kong

Michelle Lloyd
+852 3690 7504
michelle.lloyd@maples.com

Luxembourg

Johan Terblanche
+352 28 55 12 44
johan.terblanche@maples.com

Michelle Barry
+352 28 55 12 47
michelle.barry@maples.com

The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland in terms of total number of funds advised (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2021).

June 2022 © MAPLES GROUP

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice. Published by Maples and Calder (Ireland) LLP.