



FAQs on the most important PRIIPs requirements from 1 January 2023

FROM 1 JANUARY 2023, THE PRIIPs REQUIREMENTS ARE MANDATORY FOR ALL PRIIP MANUFACTURERS AND PERSONS ADVISING ON OR SELLING PRIIPs. THE TRANSITION PERIOD FOR MANUFACTURERS AND DISTRIBUTORS OF INVESTMENT FUNDS IS SET TO EXPIRE AT THE END OF 2022. IN OUR GSK UPDATE, WE HAVE COMPILED THE MOST IMPORTANT QUESTIONS AND ANSWERS YOU MAY HAVE REGARDING THE PRIIPs RULES.

Executive Summary

- From 1 January 2023, the PRIIPs rules will also be mandatory for the fund sector.
- The current summary information sheets will then be replaced by the **PRIIPs KIDs** (*key information documents*).
- The requirements for PRIIPs KIDs are laid down and specified in great detail by law in Regulation (EU) No 1286/2014¹ ("**PRIIPs Regulation**") and the accompanying regulatory technical standards in the form of

- Regulation (EU) 2017/653² ("**RTS**"; last amended by Delegated Regulation (EU) 2021/2268³ ("**new RTS**").
- PRIIPs** is the term used to refer to **Packaged Retail and Insurance-based Investment Products**.
- The rules are targeted at PRIIP manufacturers and persons who advise on or sell PRIIPs.
- PRIIP manufacturers and distributors should use the extended transition period until 1 January 2023 to adapt to the new requirements.

¹ CL2014R1286EN0030010.0001_cp 1..1 (europa.eu)

² CL2017R0653EN0050010.0001_cp 1..1 (europa.eu)

³ Publications Office (europa.eu)



1. What is the purpose of PRIIPs KIDs?

PRIIPs KIDs are summary information sheets for PRIIPs whose form and contents are stipulated in great detail.

The aim of the PRIIPs Regulation is to create standardised and uniform information documents within the European Union for (i) packaged investment products marketed to retail investors and (ii) insurance-based investment products (together also referred to as *packaged retail and insurance-based investment products*, hereinafter as “**PRIIPs**”). These documents are known as *key information documents* (“**PRIIPs KIDs**”).

The aim of these documents is to enable retail investors to understand the basic features and risks of a PRIIP and compare these with other products in order to make an informed investment decision.

2. What is a PRIIP?

The PRIIPs requirements apply to packaged retail and insurance-based investment products (PRIIPs).

- **Packaged investment products** are products that derive the amount to be repaid to the investor from reference values and assets which are not directly purchased by the retail investor (e.g. investment funds, structured products).
“Unpackaged” assets held directly by the retail investor (e.g. shares, real estate or certain asset investments) are therefore not covered by the regulation.
- **Insurance-based investment products** are products that have a maturity or surrender value that is wholly or partially exposed, directly or indirectly, to market fluctuations (e.g. life insurance policies with an investment element, unit-linked insurance policies, unit-linked life insurance and annuity insurance contracts). However, insurance products that do not offer investment opportunities are not to be classified as PRIIPs.

3. Which special cases are particularly noteworthy?

- **Retail AIFs and special AIFs (if semi-professional investors are involved)**

The preparation of PRIIPs KIDs is expressly required for the distribution of fund units to retail investors. This means that all retail AIFs are affected. The term “retail investors” refers to all investors who are not professional investors within the meaning of the MiFID II Directive. This also covers semi-professional investors within the meaning of Section 1 (19) no. 33 of the German Investment Code (KAGB) and thus also special AIFs authorised to sell to or advise such investors. This is because the PRIIPs Regulation does not recognise the concept of semi-professional investors as defined under German investment fund law.

- **Legacy products**

The PRIIP requirements generally also apply to legacy products (i.e. PRIIPs that were launched before 1 January 2018) if they are/were offered or distributed beyond 1 January 2018.

A PRIIP KID is not required if the PRIIP in question has not been offered or distributed to retail investors since 1 January 2018.

This also applies to funds for which the transitional arrangement pursuant to Art. 32 of the PRIIPs Regulation still applies until the end of 2022, with a corresponding deferral of the cut-off date.

PRIIPs KIDs are therefore not required for funds that are offered to retail investors only until 31 December 2022.

- **Secondary market trading**

It is legally unclear whether PRIIPs KIDs are required for PRIIPs that are currently only offered for trading on a secondary market and the practical application has also been inconsistent to date.

At least in the case of “legacy funds” (i.e. closed-ended AIFs that have not made any additional investments as of 22 July 2013), there should be no obligation to prepare a PRIIP KID when trading via pure brokerage platforms, provided the seller is a retail investor;



otherwise, the retail investor would be deprived of an important opportunity to be able to sell his units.

The extent to which this argumentation can also be applied generally to the trading of legacy products by retail investors or generally to trading on a secondary market by investors has not yet been conclusively clarified.

In any case, however, if the sale is carried out by the (original) issuer and the issuer provides buying and selling prices, the obligation to prepare and publish a PRIIP KID will (probably) remain intact.

- **Asset investments within the meaning of the German Asset Investment Act**

In the case of asset investments (within the meaning of the German Asset Investment Act (VermAnlG)), a case-by-case approach is required. The decisive factor is the extent to which the amount repayable to the investor depends on reference values or the performance of indirectly acquired assets.

Especially in the case of fixed-interest products (as is generally the case with subordinated loans) or shareholdings (e.g. silent partnerships), this will not usually be the case.

However, this may be different in the case of indirectly acquired investments in kind or trust constellations.

Even if the majority of asset investments are not subject to the PRIIPs Regulation, making a general classification based on the investment qualifying as an asset investment is not sufficient.

4. Who is affected?

The requirements of the PRIIPs Regulation are directed at PRIIP manufacturers as well as persons who advise on or sell PRIIPs.

PRIIP manufacturers are natural or legal persons who issue the PRIIP or are responsible for altering the risk or return profile of the PRIIP.

In relation to funds, the respective asset management company is therefore generally the PRIIP manufacturer.

As **persons who advise on or sell PRIIPs**, any (external) distributors that may be involved are also affected by the requirements of the PRIIPs Regulation.

5. What obligations do manufacturers have?

The PRIIPs Regulation requires PRIIP manufacturers to produce a PRIIP KID. Manufacturers are required to adhere to the uniform requirements specified for the format and content of the KID as well as to provide, continuously review and update the PRIIP KID.

Specifically:

- **Preparation and publication of the PRIIP KID (Art. 5 PRIIPs Regulation)**

Every PRIIP manufacturer is required (prior to offering the PRIIP to retail investors) to prepare and publish a PRIIP KID on its website.

- **Obligation to review and update the PRIIP KID (Art. 10 PRIIPs Regulation, Art. 15, 16 PRIIPs RTS)**

In addition, manufacturers are required to update and continuously review the document. The review shall be carried out at least every twelve months after the initial publication of the KID and whenever there is a change that significantly affects or is likely to significantly affect the information in the PRIIP KID.

6. What obligations do distributors have?

In addition, distributors of PRIIPs are also subject to certain obligations. In principle, the adviser or agent must provide the PRIIP KID to the retail investor **in good time** before the conclusion of the contract (cf. Art. 13 PRIIP Regulation).

Whether a PRIIP KID is provided “in good time” is assessed according to the retail investor’s knowledge and experience as well as the complexity of the PRIIP and depending on which party initiated contact.

On the other hand, there are also exceptions for distance sales transactions or follow-up transactions.



7. How must the PRIIP KID be provided to the retail investor?

The default option for providing the PRIIP KID during distribution is in paper form. An alternative may only be used if the retail investor actively requests another form of transmission. This condition is regarded as fulfilled, for example, if the investor has been given a choice in a way that can be evidenced. In this case, another durable medium (e.g. e-mail) or retrieval via a website may also be used and be sufficient.

8. Is a PRIIP KID just another name for the wAI?

PRIIPs KIDs differ significantly from the previous key investor information document in Germany (“wAI”) in terms of content, scope and structure.

The information on past performance for UCITS funds and AIFs in particular is retained from the wAI. However, it should be possible in future to provide even this information via a reference outside the PRIIP KID, for example on a website or in a separate document.

9. What are the formal requirements for a PRIIP KID?

The PRIIP KID must be **no longer than three A4 pages**. The order and headings of the information to be included are fixed. The content must be presented in a precise, fair and clear manner. Fixed text blocks and strict formulation guidelines are also required for certain sections.

10. What are the content requirements?

In terms of the required content of PRIIPs KIDs, there are seven legally prescribed sections, which are to be formulated in Q & A style:

(1) Purpose (notes on the PRIIP KID)

(2) Product (information on the product, manufacturer, distribution, regulatory authority)

(3) What is this product? (type, maturity, objectives, retail investor target group)

(4) What are the risks and what could I get in return?

- It is predefined how the risks of the investment product are to be presented, among other things via a summary risk indicator (“SRI”), which is based on the PRIIP’s market and credit risk.
- It is also closely specified how the performance scenarios are to be presented and calculated. Four performance scenarios are to be mapped. These also include a “stress scenario”, which must present significantly unfavourable effects on the product beyond the most unfavourable scenario.

(5) What happens if the PRIIP manufacturer is unable to pay out? (information on guarantee and investor compensation schemes)

(6) What are the costs?

- Detailed information on the costs to be disclosed.
- In particular, the costs over time and a composition of costs need to be specified.

(7) How long should I hold the investment and can I take money out early? (in particular, information on the recommended holding period, options to disinvest before maturity, consequences of cashing-in)

(8) How can I complain? (information on complaint management)

(9) Other relevant information (information on past performance, if applicable)

11. What are the consequences for asset management companies?

The requirements of the PRIIPs Regulation entail, among other things, higher data management requirements for asset management companies.



Specifically:

- The performance scenarios must be calculated through back-testing. This requires a price history for at least the last ten years for performance scenarios. If this is not possible (e.g. fund term of less than 10 years), a defined benchmark selection process is used.
- Based on the descriptions and requirements from MiFID II, transaction costs must also be shown in PRIIPs KIDs.
- In addition, asset management companies can expect additional work due to the obligation to publish and continuously update the KIDs. In future, asset management companies must calculate the PRIIPs performance scenarios on a monthly basis and publish their past performance on the issuer's website and update these figures on an ongoing basis if the PRIIP's content, data or indicators change.
- In addition to the PRIIPs KIDs, the fund documentation itself also needs to be adapted. For example, the model investment conditions for retail AIF which are widespread on the market still refer to the wAI as a source of information on how to obtain annual reports. Likewise, references to the wAI are also common in individual investment conditions.

Investment conditions that contain references to the wAI must therefore also be amended from the start of the new year.

12. Has BaFin already issued any practical guidelines?

According to current BaFin administrative practice, in the case of necessary editorial changes to investment conditions where references to the wAI are simply replaced with references to the PRIIPs KIDs, all that is required is a simple notification of the change to BaFin. Similarly, collective notifications should be admissible in this context.

⁴ Cf. also our GSK Updates on the earlier postponements [GSK Update-PRIIPs-Regulation_PRIIPs-Regulation-1.pdf](#).

13. From which date do the regulations apply?

The PRIIPs Regulation has been in force since 1 January 2018.

The preparation of PRIIPs KIDs has been mandatory for endowment insurance and derivatives since 2018.

Only investment funds (UCITS and AIFs) targeting retail and semi-professional investors and for which a wAI must be provided in accordance with the German Investment Code (KAGB) are still exempt from the obligations of the PRIIPs Regulation until 31 December 2022 under the current legal conditions (cf. Art. 32 PRIIPs Regulation, amended by Art. 17 no. 1 Regulation (EU) 2019/1156 of 20 June 2019).

With the expiry of this transitional arrangement, the PRIIP requirements will thus also apply to investment funds from 1 January 2023.⁴

14. Where are the requirements specified?

In addition to the PRIIPs Regulation, further details were laid down in the form of regulatory technical standards (RTS), which have been amended again by the new RTS.

The RTS and new RTS contain, among other things, the template for the document (Annex I), mathematical and methodological specifications for the calculation and presentation of risk (especially the summary risk indicator (SRI); Annexes II and III), as well as the performance (Annexes IV and V) and the costs of the PRIIP (Annexes VI and VII).

15. In which territories does the PRIIPs Regulation apply?

The PRIIPs Regulation applies as soon as a PRIIP is offered to a retail investor within the territory of the European Union or is subscribed within that territory. In this respect, the PRIIP rules also apply to non-EU PRIIPs.



16. Is an approval or notification procedure with BaFin required?

The PRIIP KID does not (currently) have to be approved by the Federal Financial Supervisory Authority (BaFin), nor does BaFin have to be notified separately prior to the start of distribution. It is up to the Member States whether they introduce such a prior notification procedure and this has so far not been implemented in Germany.

However, BaFin is currently authorised to request submission of PRIIPs KIDs for examination.

In addition, BaFin may examine published PRIIPs KIDs as part of its capital market controls and, in the event of violations, enact measures ranging from requiring the KID to be adjusted up to warnings and distribution bans.

17. Are there already plans for further changes?

While the new changes from 1 January 2023 are currently the main focus for the funds industry, the PRIIPs discussion is far from over.

The European Commission is currently pursuing a “strategy for retail investors”. This includes, among other things, revising the PRIIPs Regulation. In this regard, the European supervisory authorities EBA, ESMA and EIOPA (together the “ESAs”) submitted a report with recommendations for the review of the PRIIPs Regulation on 2 May 2022 (“*Call for advice on PRIIPs: ESA advice on the review of the PRIIPs Regulation*” of 29 April 2022, herein-after also referred to as “**PRIIPs Report**”⁵).

In the report, the ESAs recommend significant changes to the PRIIPs Regulation aimed at further improving the accessibility and comparability of product information for consumers. There is no stated target date for the implementation of the proposed amendments. Although the ESAs have repeatedly highlighted the importance of a clear legal situation by 1 January 2023, sweeping changes are no longer to be expected, at least by the end of the year.

⁵ [jc_2022_20_esa_advice_on_priips_regulation.pdf](https://ec.europa.eu/jc_2022_20_esa_advice_on_priips_regulation.pdf) (europa.eu)

Conclusion and outlook

Overall, timing is a particularly important factor in the current PRIIPs regulatory framework:

There is not much time left until 1 January 2023 to update the documentation for funds in distribution and to publish the PRIIPs KIDs in time.

Regardless, a lot is still in flux at the moment and many implementation issues have still not been conclusively clarified – despite the PRIIPs Regulation essentially being in force since 2018.

All the more reason to remind the fund industry to initiate or complete the process to implement the PRIIPs Regulation before it also applies to investment funds from 1 January 2023. Otherwise, products without a PRIIP KID can no longer be distributed after that date.

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