



Questions and answers on the implementation of Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPS)

Last update: 13 July 2018

This is not a regulatory document. Its purpose is to transmit to the sector and, in particular, investment firms, interpretation criteria for the proper implementation of the requirements which, under Regulation 1286/2014 (PRIIPS), will apply from 31 December 2017.

Note that the criteria included in this note must be understood as referring, in any case, to the products supervised by CNMV.

1. INTRODUCTION

The PRIIPs Regulation, applicable as of 31 December 2017, establishes the obligation for manufacturers of packaged retail and insurance-based investment products (PRIIPS) to prepare a standardised information document and deliver it to potential clients in good time. The document has a maximum of three pages and its objective is to gather clear and succinct relevant information about products to make it easy to understand them and compare them with other investment products.

CNMV has been maintaining contacts with the sector's main associations related to the provision of investment services in recent years in order to identify and compile the issues related to the PRIIPS Regulation that may raise doubts or concerns about their interpretation prior the entry into force of this Regulation. As a result of these contacts, CNMV is publishing a set of questions and answers on various issues that the sector has raised based on the information currently available.

This document sets out the interpretative criteria that are considered appropriate in relation to the issues raised. You are invited to consult in a supplementary manner the criteria published by the European Commission and the ESAS Joint Committee on the PRIIPS Regulation.

It should be borne in mind that issues related to the interpretation of the regulation are still being debated within the scope of the Joint Committee in order to achieve adequate supervisory convergence. Therefore, the criteria disclosed in this document may be subject to review once more information is available on the practical experience in the implementation of the standard and on the interpretation at European level of the issues under discussion.

To the extent that other issues are considered necessary to be clarified, they will be added to this questions and answers document, the update date being identified in each case.

Main abbreviations

IF(s)	Financial instrument(s)
PRIIPs	Packaged Retail and Insurance-based Investment Products
PRIP	Packaged Retail Investment Product
KID	Key Investor Document
KIID	Key Investor Information Document, established by the UCITS

	Regulations.
UCITS	Undertakings for the Collective Investment of Transferable Securities.
AIFMD	Alternative Investment Funds Managers Directive
PRIIPS Regulation	Regulation 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. http://www.boe.es/doue/2016/354/L00035-00036.pdf
PRIIPS Delegated Regulation	Delegated Regulation (EU) 2017/653 of the Commission, of 8 March 2017, supplementing Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, on key information documents for packaged retail and insurance-based investment products, through the establishment of regulatory technical standards with respect to the presentation, content, examination and review of key information documents and conditions for compliance of the requirement for provision of such documents. http://www.boe.es/doue/2017/100/L00001-00052.pdf
European Commission Guidelines on PRIIPS	Communication from the European Commission dated... Guidelines on the implementation of Regulation 1286/2014 https://ec.europa.eu/info/publications/170704-PRIIPs-guidelines_en
Q&A of the Joint Committee on the KID on PRIIPS	Questions and answers on the Key Information Document for the Investor in relation to PRIIPs, published by the Joint Committee of the European Supervisory Authorities. https://esas-joint-committee.europa.eu/Pages/Activities/Packaged-Retail-and-Insurance-Based-Investment-Products.aspx

2. SCOPE AND GENERAL ISSUES (Last update: 22 December 2017)

2.1 What types of products does the PRIIPS Regulation apply to? (Last update: 22/12/ 2017)

CNMV's reply

Article 4 of the Regulation contains a definition of the products that should be considered as subject to the standard, and Article 2 specifies certain products that are excluded. Additionally, Recitals 6 and 7 of the Regulation can be consulted to assist in the interpretation of this definition.

An exhaustive list of product classes to which the Regulation applies is not defined. Manufacturers and distributors are responsible for assessing whether each product is subject to this regulation or not, taking into account the specific economic and contractual conditions of the product.

Notwithstanding the foregoing, certain types of products that may be understood to be included in a general manner in the scope of PRIIPS can be identified.

Within the scope of CNMV's competence, structured products and derivatives are worth noting. Investment funds are also packaged products subject to this standard; however, for those funds that prepare a KIID (Key Investor Information Document) for the investor in accordance with the UCITS regulations or an equivalent document, a transitional period is established until 31 December 2019, during which they will maintain said KIID instead of preparing the KID PRIIPS. Some types of corporate bonds, insofar as they correspond to the definition of PRIIPS, could also be included in the scope. On the other hand, assets that are held directly such as, shares or government bonds are not PRIIPS.

Issues related to the scope of the Regulation are being analysed directly by the European Commission. Within the framework of the Joint Committee of the European Supervisory Authorities (hereinafter, Joint Committee), work is being done to achieve a harmonised interpretation of the various European supervisors.

2.2 Is a hedging derivative a PRIIP? (Last update: 22/12/2017)

CNMV's reply

A derivative is not by its very nature an investment/speculative or hedging derivative; this nature does not depend on the product but on the objective of the investor that acquires it, or even on the relationship and adjustment to the positions and previous portfolio of the investor. In this connection, the PRIIPS Regulation does not make any distinction in relation to the investor's intention or objective.

Note that the transactions contracted with a hedging objective also have risk and in this sense it is also appropriate to provide the retail client with an information document along these lines.

2.3. Does the Regulation apply to products that do not require a payment by the retail investor? Are products such as exchange rate insurance in which there is no payment at the time of acquisition, included in this concept? (Last update: 22/12/2017)

CNMV's reply

The European Commission has clarified that a product whose acquisition does not require a payment by the retail investor, meaning that there is neither an initial payment nor any risk of future payments, is not considered an investment subject to the PRIIPS Regulation.

In line with the foregoing, we understand that the indication regarding products in which there is no payment does not include derivative financial instruments in which the client does pay amounts or makes or can make current or future payments, such as an exchange rate insurance.

2.4. How does the Regulation apply to products listed on a secondary market? (Last: update 22/12/2017)

CNMV's reply:

The obligations stipulated by the PRIIPS Regulation apply to products listed on a secondary market, on the understanding that they are available for purchase by retail clients. Therefore, manufacturers must prepare a KID and keep it updated as long as their products continue to be listed on the market and can be purchased by retail clients. For their part, the persons who advise on or sell a PRIIP traded on a secondary market must provide the KID to the client in good time before processing its purchase.

The Regulation does not include any "grandfathering" clause or exception for pre-existing products. Therefore, it is understood that PRIIPs that are listed on a market (and therefore available to retail clients) on 31 December 2017 are subject to the Regulation from that moment onwards.

2.5. On what date must the Spanish CIS intended for sale to retail investors comply with PRIIPS Regulation? (Last update: 22/12/2017)

CNMV's reply

In accordance with the provisions of Article 32(1) of the aforementioned Regulation, the authorised CIS, pursuant to Directive 2009/65/EC (UCITS CIS) will be exempt until 31 December 2019 from the obligations established therein.

Regarding Spanish CIS that are not authorised pursuant to Directive 2009/65/EC (non-UCITS CIS), in accordance with the provisions of the second paragraph of said article, will be exempt until 31 December 2019 from the requirements of the PRIIPS Regulation, provided that such CIS publish the Key Investor Information Document (KIID) regulated by the National Securities Market Commission, on the Key Investor Information Document and the prospectus of collective investment schemes.

Specifically, the Hedge Funds (“IIC de Inversión Libre” in Spanish), the Funds of Hedge Funds (“IIC de IIC de Inversión Libre” in Spanish) and Real Estate Investment Funds and Companies (“FII” and “SII” in Spanish), open to subscriptions by retail investors, which carry out the online Prospectus procedure (which is scheduled to begin in early 2018) to adapt to the KIID as envisaged in the aforementioned Circular 2/2013, will also be exempt from the requirements of the PRIIPs Regulation until 31 December 2019.

2.6. What are the Venture Capital Firms (ECR) subject to the provisions of PRIIPS Regulation? (Last update: 22/12/2017)

CNMV’s reply

Current Spanish regulations do not oblige Venture Capital Firms to prepare a key information document for investors equivalent to the one provided for by UCITS Directive 2009/65/EC, which means that in view of Article 32(2) of the PRIIPS Regulation, the postponement until 1 January 2020, as per Article 32(1) is not applicable.

By virtue of the above, those Venture Capital Firms whose distribution is not restricted to professionals and whose terms of subscription for investors has not expired must make available to investors, as of 1 January 2018, a key information document adapted to the PRIIPS Regulation (PRIIPS KID).

Furthermore, the venture capital firm management company (the private equity firm in the case of a self-managed private equity firm) must publish on its website the PRIIPS KID.

3. GENERAL OBLIGATIONS OF THE MANUFACTURER (Last update: 22 December 2017)

3.1. What is the acceptable level of standardisation in the preparation of KIDs? Is it possible to prepare the KIDs by product class, without including specific levels to be acquired, but rather hypothetical levels by way of example? (Last update: 22/12/2017)

CNMV's reply

CNMV considers that it is not acceptable to provide clients with a generic KID prepared for a class of products which does not include information on the actual conditions of the product that the client is going to acquire. The use of hypothetical data or examples would not be acceptable.

Notwithstanding the foregoing, it is possible to accept a margin of flexibility but considering, in any case, that the information provided to the client must comply with all the provisions of the Regulation and not confuse the investor. In this line, the Joint Committee has expressed their opinion in a Q&A on OTC derivatives. In this Q&A it is indicated that it would be possible to draft the KIDS for a group of OTC derivatives, provided that they share the same basic characteristics and if the differences with the data in the KID, in cases where the specific data of the contract were used, are very limited.

In any case, the KID must be accurate, adapted and clear and not cause confusion on key aspects.

3.2. What is meant by the "same PRIIP" for the purposes of Article 13 of the Regulation? Is it possible to understand that it refers to product classes in a generic way, without particularities (regarding neither term, level of guarantees nor barriers, etc.)? (Last update: 22/12/2017)

CNMV's reply

Article 13(4) is applicable to successive purchases of the same product that are carried out according to prior instructions from the investor, which cannot be interpreted in the sense of allowing the delivery of a general KID by product class. Nor can it be understood that it enables fulfilment of the obligation to deliver the KID for transactions with similar products or products purchased independently.

3.3. Is the "manufacturer" of a PRIIP always the issuer, or can a third party other than the issuer or SPV be considered a manufacturer for the purposes of this regulation (for example, the issue arranger)? (Last update: 22/12/2017)

CNMV's reply

Without prejudice to the considerations that could be derived from the analysis of specific products, we understand that, in general terms, the manufacturer could be identified as the person making the decision regarding the characteristics and conditions of the product. In the case of products without legal personality, it is understood that the manufacturer will be the manager who makes the decisions, as is already the case with the investment fund KIID. All of this, without prejudice to the possibility of delegating to another entity any part of the design and issuance process, or the actual preparation of the KID, as envisaged in Recital 12 of the Regulation.

3.4 How should the KID be published on the manufacturer's website? Is it possible to publish customised products or products with limited access to certain clients in a private section of the website? (Last update: 22/12/2017)

CNMV's reply

Recital 12 of the Regulation states that the objective of publishing the KID on the website is to achieve maximum circulation and availability of the document, in line with the general objective of facilitating the comparison of different products by the investor. Accordingly, it is considered that the KID should normally be published in a section of the website which is accessible in a general way. Notwithstanding the foregoing, it is considered reasonable that the KID of a non-standard product, custom-designed for a client, may be published in a section of the website which is accessible only to the client for whom it was designed.

3.5 Is it necessary to update the KID in the case of products that are not available to new investors and cannot be transmitted? And in the case of illiquid products for which the issuer does not undertake to provide liquidity? And in the case of customised PRIIPS? (Last update: 22/12/2017)

CNMV's reply

A manufacturer will be obliged to review the KID and keep it updated to the extent that the product to which it refers is still available for purchase by retail clients.

3.6. In the event that a KID is modified, in which cases should the manufacturer communicate the update to clients who had previously purchased the product? (Last update: 22/12/2017)

CNMV's reply

Recital 22 of the Delegated Regulation indicates that, since the changes may be relevant for investors, the location of the document on the manufacturer's website must be facilitated, and that where possible, investors should be informed of the revision.

The recital is expressed in a flexible way and is open to the use of different mechanisms depending on the relevance of the change and the information available on the clients. To the extent that the manufacturer has data on the clients to whom a PRIIP has been sold, it is considered appropriate to actively inform them that the KID corresponding to the product has been modified. The entity must decide on the most appropriate system taking into consideration the usual channels employed to communicate with its clients, the system of alerts by email being an example of the possible systems.

4. DISTRIBUTOR OBLIGATIONS (Last update: 13 July 2018)

4.1 The PRIIPS Regulation obliges persons who advise on or sell a PRIIP to a retail investor to provide them with the KID in good time. How should "sell" be interpreted? Does it refer only to active selling or does it also apply in the case of mere brokering? (Last update: 22/12/2017)

CNMV's reply

The Regulation does not include a distinction between the different situations in which the sale or distribution of a product may occur. In particular, a "mere brokering" service has not been defined separately. Therefore, in all situations in which an entity sells a PRIIPS to a retail client or advises them on it, it must comply with the obligations set forth in the Regulation and, in particular, it must provide its client with a KID sufficiently in advance of the transaction.

4.2. In cases where the PRIIP manufacturer is from a country outside the European Union, is it also necessary to provide the client with a KID before the sale? (Last update 13/07/2018)

CNMV's reply

As the European Commission has clarified in the published Guidelines, it is not possible to sell or provide advice on a PRIIP to a client within the territory of the Union without providing them with a KID in accordance with the provisions of Article 13 of the Regulations. This also applies to products from third countries that wish to sell their products in the EU.

On the other hand, it should be remembered that, pursuant to Article 15(d) of Law 35/2003, of 4 November, on Collective Investment Schemes, so that the shares or holdings of a Collective Investment Scheme (including ETFs) managed by a management company not resident in the European Union may be marketed to non-professional investors in Spain, among other requirements, they must be expressly authorised for this purpose by CNMV and both the management companies and the CIS intended to be marketed must be registered in the corresponding administrative registers.

4.3. In what language should the KID of the products distributed in Spain be drafted? Does CNMV accept any language other than Spanish or other official languages of Spain? (Last update: 22/12/2017)

CNMV's reply

In accordance with Article 7 of the PRIIPs Regulation, the KID must be drafted in one of the official languages of the part of Spain where the product is distributed, or in another language accepted by the competent authority. Otherwise, it must be translated.

CNMV considers it acceptable for a distributor to provide an investor with a KID drafted in a language other than the official languages in Spain, only if the distributor has ensured that the investor has proper knowledge of such language and is able to evidence it. All other requirements in the Regulation shall be fulfilled. In particular, Article 7.2 of the PRIIPS Regulation provides that if a PRIIP is promoted in a Member State, through marketing documents drawn up in one or more official languages of that Member State, the key information document shall at least be drafted in the corresponding official language.

4.4. Is it possible to comply with the obligation to provide the KID with a warning in the purchasing process where it is indicated that the investor has at their disposal the KID relating to the product on the manufacturer's website? (Last update: 22/12/2017)

CNMV's reply

Article 14 of the Regulation indicates the media that can be used to provide the document to the client, allowing the distributor, as much flexibility as possible to choose it. In this regard, the use of electronic communications is allowed when appropriate to the circumstances of the transaction. However, it is established that the retail investor should always be able to receive it on paper. On the other hand, as stated in the aforementioned Article 14, in the case of using a website to facilitate the document, the client should be notified of the website's address and where the key information document can be accessed. In addition, it should be possible to access the document on that website and download it in a durable medium for as long as the investor needs to consult it.

Therefore, entities have a margin of flexibility to choose how they provide the document, but they must respect the limits and requirements indicated in the Regulation. A notice of availability, by itself, would not meet these requirements.

5. CONTENT OF THE KID –GENERAL ISSUES (Last update: 22 December 2017)

5.1. What information should be included in the KID section regarding the investor for whom the product is intended? And how is it coordinated with the product governance obligations established in MIFID II? (Last update 22/12/2017)

CNMV's reply

The manufacturer should include a description of the type of investor for whom the product is intended in the KID. The identification of said target market should consider the needs, characteristics and objectives of the type of client with which the product is compatible and the applicable product governance rules. The description to be included in the KID should include the essential aspects of the identified target market, taking into account the limitations of space and using language that is comprehensible for the retail investor.

5.2. What information should be included in the KID section, How can I complain? Can the manufacturer include a warning to the effect that if a third party sells a product or provides advice on it, the client must request information from the third party on how to submit claims related to distribution? (Last update: 22/12/2017)

CNMV's reply

The entity that draws up the KID must include information on the steps to follow to submit a claim, as well as contact information as to where to address the claims that affect it. In the case of claims regarding the conduct of other entities, it may include a warning on the indicated line.

5.3. What should be used as a reference when recommending a certain maintenance period? Examples of products for which it is difficult to determine a specific maintenance period are the products used for hedging, American options and self-cancelling products (Last update: 22/12/2017)

CNMV's reply

Neither Regulation 1286/2014 nor Delegated Regulation EU 2017/653 have established criteria to identify a maintenance period, understanding that this corresponds to the manufacturer, taking into account the characteristics of the product and, if applicable, the characteristics of the target market it is aimed at.

5.4. What information should be included in the KID section "Product type"? (Last update: 22/12/2017)

CNMV's reply

In accordance with Article 2(1) of Delegated Regulation 2017/653, the type of product in question must be identified, and its legal form must be described, so that the retail client can be provided with a first impression of the essential characteristics of the product that is being offered to him.

A list of types of instruments whose name must obligatorily be used has not been established. In order to offer information that is relevant to the client, it would be appropriate not to use a class that is too generic (for example, instead of "option", "long call option" would be preferable).

6. CONTENT OF THE KID – RISK INDICATOR AND PERFORMANCE SCENARIOS (Last update: 22 December 2017)

6.1 Should category 4 products (products whose value depends in part on factors that are not observed in the market) include products such as Credit linked notes whose main risk factor cannot be observed in the data history? (Last update: 22/12/2017)

CNMV's reply

As the Joint Committee point out in the Q&A on market risk measure No. 12, category 4 is intended for products whose value is not calculated using the market prices of the underlying or reference values, but which depend to a certain extent on decisions taken by the market manufacturer that are not caused automatically by external factors. A typical example is insurance products that distribute part of the benefits of the entity to the investor.

The case of "credit linked notes" is dealt with in another Q&A specific to this section (Q&A No. 13), in which it is stated that they should not be considered category 4, but rather category 1, 2 or 3, depending on the characteristics and availability of historical market data to calculate risk indicators and scenarios.

6.2 A structured product that returns on maturity the positive or negative revaluation of an index, calculated on the invested capital, and that also has a capital guarantee, in what category would it be classified for the purpose of calculating the risk indicator and performance scenarios? (Last update: 22/12/2017)

CNMV's reply

The product mentioned belongs to category 3 since the result is not a constant multiple of the underlying for all its values. As it has capital protection, for certain underlying securities, the result will be the recovery of the guaranteed capital, without applying the pay-off formula.

For these products, as long as the protection is unconditional, the provisions of section 24 of Annex II of the Regulation apply, and the manufacturer can apply the simplified methodology for the risk indicator, which assumes that 97.5% VAR is equal to the guaranteed capital, instead of performing the simulation process, which implies a simplification of the calculations to be made.

6.3 What does the fact that the frequency of the prices to be used for the calculation of the risk indicator is bi-monthly mean? (Last update: 22/12/2017)

CNMV's reply

For the purposes of section 9 of Annex II of the PRIIPS Delegated Regulation, the bi-monthly frequency means that prices are published twice a month.

6.4 How is the risk indicator calculated for a self-cancelling product? What value of T should be used in the formula for calculating the market risk parameter? (Last update: 22/12/2017)

CNMV's reply

The holding period of the simulation representing the 2.5% percentile should be taken as the T rather than the recommended holding period.

6.5 Should possible results be calculated in intermediate scenarios (prior to maturity) for products without disinvestment possibilities? (Last update: 22/12/2017)

CNMV's reply

The Delegated Regulation does not provide for differences in the intermediate scenarios to be calculated according to the level of liquidity of the product. Therefore, for all PRIIPS with a term of more than a year, except for the exchanged traded derivatives mentioned in section 17 of Annex IV, information on possible results in different scenarios must be included in the KID at certain moments of the product's life-cycle, in accordance with points 19-20 of Annex IV.

Notwithstanding the foregoing, note that for products without liquidity under the terms of section 90 of Annex VI, it will not be necessary to present cost indicators in intermediate periods; rather, these data will only be shown at maturity.

6.6 What types of products could apply the credit risk mitigators included in paragraphs 46 to 49 of Annex II of the Delegated Regulation? (Last update: 22/12/2017)

CNMV reply

Within the scope of CNMV's competence, it is considered in principle that the products that could apply these mitigators are basically investment funds or similar entities that have segregated assets with priority access in the case of insolvency for investors, in accordance with the provisions of the regulations indicated in this point (UCITS and AIFM Directives). These products may benefit from the mitigator referred to in paragraph 46 regarding the structure of the instrument, without prejudice to the need to assess the credit risk of the underlying assets or assets in which the PRIIP invests, as the case may be.

6.7 Are structured finance products eligible for the risk mitigator described in paragraph 46 of Annex II? (Last update: 22/12/2017)

CNMV's reply

Paragraph 46 aims to recognise certain aspects of the product as a credit risk mitigator, such as the existence of segregated assets over which the investor has priority with respect to other creditors of the entity backing the payment obligations.

Although that mitigator can be applied to these products, they refer exclusively to the credit risk derived from the structure of the instrument. This is regardless of the risk of the product derived from the underlying assets or assets in which it invests, which shall be valued if appropriate.

7. CONTENT OF THE KID- COSTS (Last update: 22 December 2017)

7.1 In relation to the fair value of a PRIIP other than an investment fund, paragraph 40 of the delegated regulation states that it must comply with the applicable accounting standards. Does this mean that it must be equal to an accounting value? (Last update: 22/12/2017)

CNMV's reply

The calculation of the implicit costs in the PRIIPs other than investment funds is detailed in paragraphs 36 to 46 of Annex VI of Delegated Regulation 2017/653. In particular, section 37 states that the difference between the price and the fair value of a product is considered an estimate of the total entry costs included in the price. For these purposes, the fair value is the price that would be received for selling an asset or paid to transfer a liability in an orderly transaction in the main market under normal market conditions.

Points 39 et seq. mention aspects to be met by the methodology for calculating the fair value according to the firm's policy. With respect to the references to accounting standards, the Regulation merely states that the requirements included in the accounting standards must be respected in order to estimate fair value, when such standards require to value the assets in the portfolio. Therefore, it should not be confused with following the accounting criteria when this is different (amortised cost for example).

7.2 Should the fair value used to calculate the costs of PRIIPS other than investment funds, and in particular for OTC derivatives, consider the specific implications for each client or is it enough to consider a generic market value that allows KIDs to be published by product type? (Last update: 22/12/2017)

CNMV's reply

The KID must reflect the different conditions that are effectively offered to the different clients.

7.3. What kind of taxes should be included as product costs? (Last update: 22/12/2017)

CNMV's reply

Point 80 of Annex VI indicates that the costs to be included in the cost indicators will include all taxes. Reference is also made to the inclusion of taxes in other sections (in relation to subscription fees, in point 3(d) or in relation to the net execution price to be considered in the calculation of the operating costs of investment funds, in point 13).

In any of these cases, it should be clarified that it does not refer to direct or indirect taxes that the client will have to assume, but to those accrued in the formalisation of the transaction or management of the product.