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Overview of the EU Commission's workshop on the implementation of the PRIIPs (packaged retail and insurance-based investment products) framework

EU Commission's (EC) workshop on the implementation of the PRIIPs framework

On 11 July 2016 the EC invited market participants of the insurance, fund, structured financial products and derivatives sector to a workshop in Brussel (the "**Workshop**") in relation to the implementation of the PRIIPs framework. Linklaters had the chance to participate at this Workshop and would like to give you an overview of the most important statements made by several commission's and European financial regulatory authorities' representatives in relation to structured financial products and derivatives.

The commission's and regulatory bodies' representatives (the "**Representatives**") were: Timothy Shakesby (EIOPA), Ursula Gerold (BaFin), Sven Gentner (EC), Lukas Bortel (EC), Emmanuel Doumas (ESMA), Hannie de Cloe-Vos (AFM) and Barbara Antonides (AFM) and Vanessa Casano (AMF).

The Representatives discussed the topics "Scope", "Costs", "Risks" and "Performance Scenarios" by giving short presentations and answering certain questions which have been submitted prior to the Workshop by market participants. Subsequently the panel was open for questions of market participants. However, it was not possible to address all questions raised by market participants present at the Workshop.

If you are interested to watch the whole Workshop yourself, you can find a webstream under the following link:

<https://webcast.ec.europa.eu/workshop-on-priips-with-financial-services-stakeholders>

Further, power point slides can be downloaded [here](#).

In relation to the ongoing process, it was mentioned that frequently asked questions (FAQs - Level III measures) are intended to be published prior to the EC summer break. The Workshop was an opportunity to raise questions so that these can be considered for Level III measures.

Please note that some of the answers given by the Representatives were of a general nature and some were not final yet.

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The Representatives expressly asked to address any additional questions to them via email.

General statements, scope of PRIIPs regulation and obligation to publish a key investor document (KID)

- **Territorial scope:** There shall be an obligation to produce a PRIIPs-KID as long as the retail investor is within the EEA. Whenever the retail investor is geographically outside the EU there shall be no PRIIPs-KID obligation. The above shall apply irrespective of any domiciliation.
- **Competent authority:** There will not be a distinction between home or host authority. The competent authority may be the authority where the manufacturer is incorporated or the country of distribution. However, there shall only be a single competent authority. This point seems to be subject to further elaboration.
- **No KID obligation:** The Representatives stated that there shall be no obligation to produce a PRIIPs-KID in case of (i) products with a fixed or floating interest rate, (ii) PRIIPs offered to non EU/EEA clients, e.g. outside the EU/EEA and (iii) PRIIPs bought and sold by a portfolio manager, including in the name and for the account of a retail investor. The Representatives did not elaborate point (iii) any further.
- **KID obligation:** The Representatives stated that it is not possible to provide more precise guidance of the PRIIPs in scope or out of scope of the PRIIPs regulation. However, the competent national authorities will give more guidance on the scope of the PRIIPs regulation. The Representatives stated also that PRIIPs, which are available on a market and where contractual provisions are published, shall be captured by the regulatory technical standards (the “RTS”) of the PRIIPs regulation. Stock exchanges are according to the EC considered manufacturers of exchanged traded PRIIPs.
- **KID obligation ceases:** The obligation to produce a KID ceases in case (i) the retail investors cannot buy the product or enter into the contract anymore, (ii) the manufacturer offers prices for redemption only, (iii) books are closed, (iv) individual contracts are varied and (v) products are personalised. The panel did not specify these points in more detail, however they stated that the KID obligation applies every time there is a new subscription of a PRIIP.
- **Generic vs. transaction-specific OTC derivatives PRIIPs-KID:** In relation to OTC derivatives a type of standardised PRIIPs-KID shall be possible, stating the main features of a product. Modifications of the risk reward profile or the pay off structure shall not require a new PRIIPs-KID. A specific PRIIPs-KID shall, however, be necessary on a case by case basis. The specific set up of a standardised PRIIPs-KID for OTC derivatives has not been elaborated any further.

- **FX Forward OTC PRIIPs-KIDs:** The Representatives are aware of the discussions in relation to FX Forwards and the question, if these are within the scope of the RTS/PRIIPs regulation or not. This question is currently being considered, guidance will be provided shortly.
- **No real time PRIIPs-KID:** The RTS do not require PRIIPs-KIDs to be produced, on demand or in real time, e.g. on an intra-day basis. However, intra-day updates of PRIIPs-KIDs are of course possible.
- **Provision of PRIIPs-KID:** Recital (22) of the RTS which states (among others) that where possible PRIIPs manufacturer should inform retail investors when the KID have been revised, for example by way of mailing lists or email alerts, is a best practice and not-binding.
- **General statements:** Where the PRIIPs regulation requires information not addressed in the RTS, the RTS do not prevent this information to be included. The PRIIPs-KID template which is displayed in the RTS may not be re-designed.

Costs

- **Non-relevant costs and display:** The Representatives stated that where costs which are not relevant for a specific product (as certain costs only apply to certain products) shall not be mentioned at all in the PRIIPs-KID. Therefore non-relevant row(s) in the table(s) shall be deleted for the specific PRIIPs KID.
- **Term “carried interest”:** The term carried interest is not defined in the PRIIPs regulation due to different EU legislation. The definition of carried interest in the AIFMD shall form the basis for this term.
- **References to MiFD II:** The Representatives highlighted that the FAQs (of the PRIIPs regulation or of MiFiD II) will deal with references in the PRIIPs regulation to provisions of MiFiD II.
- **Cost indicator – significant change:** The Representatives explained that it is expressly left open, what constitutes a significant change in relation to the cost indicator, because of the broad range of PRIIPs.

Risks

- **SRI:** It shall not be possible to voluntarily opt into a higher category of the summary risk indicator.
- **Annex 2, Part 3 n° 53 RTS:** The Representatives stated that Annex 2, Part 3 n° 53 RTS in relation to the MRM, will be reviewed. The intention was to capture products which are between two MRM classes and to avoid frequent switches of MRM class/SRI.
- **Illiquidity/Liquidity risk (if applicable):** Either the PRIIP has to be described as illiquid or as having a liquidity risk, therefore only one of the narratives “illiquidity” or “liquidity risk” shall be applicable.

- **Comprehension alert:** Guidance on when the comprehension alert (recital (18) of the PRIIPs regulation) has to be included into a PRIIPs-KID shall be in the national competent authority's responsibility.

Performance Scenarios

- **Display of performance scenarios:** The graph in Annex V Part II of the RTS has been deleted, but the display of such graph for exchange traded derivatives (ETDs) in the PRIIPs-KID is possible (point 12 Annex IV of the RTS). However, these graphs shall not be possible for the performance scenario display of OTC derivatives.
- **Illiquid products and intermediate periods:** For illiquid PRIIPs it is also legally necessary to display intermediate periods.
- **Forth performance scenario:** The forth scenario can be necessary in case of certain events. Knock-out or knock-in events of a structured financial product were mentioned as such an event.
- **CLNs:** Credit Linked Notes will be dealt with in the Level III measures.

Contacts

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