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FMA CIRCULAR

ON KEY INFORMATION  
DOCUMENTS FOR  
PACKAGED RETAIL AND  
INSURANCE-BASED  
INVESTMENT PRODUCTS  
(PRIIPS)

# I. PRELIMINARY REMARKS

This circular is addressed to all insurance undertakings supervised by the Austrian Financial Market Authority (FMA) pursuant to Article 5 no. 1 of the Insurance Supervision Act of 2016 (VAG 2016; Versicherungsaufsichtsgesetz 2016) as well as legal entities pursuant to Article 26 of the Securities Supervision Act of 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018), that design, advise or sell insurance-based investment products pursuant to Article 4 (2) of Regulation (EU) No. 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIP-R; PRIIP Regulation)<sup>1</sup>. The PRIIP Regulation also generally applies for management companies pursuant to the Investment Funds Act of 2011<sup>2</sup> (InvFG 2011; Investmentfondsgesetz 2011) and alternative investment funds managers pursuant to the Alternative Investment Funds Manager Act<sup>3</sup> (AIFMG; Alternative Investmentfonds Manager-Gesetz).

In this circular, the FMA publishes its legal interpretation on the scope of application and the presentation of the Key Information Document (KID) derived from the PRIIP-R and the Delegated Regulation (EU) 2017/653 supplementing the PRIIP-R (the Delegated Regulation)<sup>4</sup> for packaged retail and insurance-based products. This circular contains the first selected interpretations in relation to the PRIIP Regulation, which entered into force on 01.01.2018.

Both Directive (EU) 2016/97 on insurance distribution (IDD; Insurance Distribution Directive)<sup>5</sup> as well as Article 5 no. 63 of the draft of the Insurance Contract Act of 2017 (VersVertrG 2017-E) address the notion of the insurance-based investment product, and make provisions for additional requirements with regard to distribution, conflicts of interest and information requirements.

This circular does not constitute a legal regulation. It is intended to serve as guidance and reflects the FMA's legal interpretation. No rights and obligations extending over and above the provisions of the law can be derived from this circular.

Where designations used refer to natural persons, the formulation used applies to both genders.

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<sup>1</sup> 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).

<sup>2</sup> Particular note should be taken of the transitional provisions pursuant to Article 32 (1) PRIIP Regulation.

<sup>3</sup> Article 32 (2) PRIIP Regulation as well as the relevant provisions made under national law.

<sup>4</sup> Commission Delegated Regulation (EU) 2017/653 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 (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents.

<sup>5</sup> Article 2(1) (17) IDD.

## II. SCOPE

### A. ACTUAL SCOPE OF APPLICATION

#### 1. PRODUCT CATEGORIES

Insurance-based investment products are defined pursuant to Article 4 (2) PRIIP-R as an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations (i.e. generally classical, investment-oriented, unit-linked and index-linked life insurance is covered by the scope of application). This condition is also met in the case of life insurance contracts with participation in profits based on potential upward deviations even where there is a capital guarantee or a guaranteed minimum interest rate.<sup>6</sup>

Particular note should be taken regarding the following specific features:

- If insurance against the risk of death (life insurance) is offered jointly with survival insurance in the form of a **combined endowment and life insurance policy**, then both components (the benefit both in the event of survival and of death) must be presented in the KID, although as a rule insurance against the risk of death does not fall within the scope of application of the PRIIP-R. This is due, among factors, to the fact that the Delegated Regulation stipulates a death scenario in addition to the survival scenario in Templates A and B<sup>7</sup>. Information about the risk premium and its effects on the return of the investment must also be included in the section "What is this product?"<sup>8</sup>
- In the case of **deferred pension insurance** the presentation of the performance scenarios may be restricted to the accumulation phase. Pension benefits must be presented in the section "What is this product?"
- **Pension insurance policies that begin immediately** do not fall within the definition in Article 4 (2) PRIIP-R. A KID is therefore not necessary for such products.

Among others, the following products fall **outside of the scope of application** of the PRIIP-R:

- **non-life insurance products** pursuant to Annex I of Directive 2009/138/EC do not fall within the scope of application of the PRIIP-R (Article 2 (2) (a) PRIIP-R). Products that are offered on the basis of a licence held for classes 1 to 18 pursuant to Annex A to Article 7 para. 4 VAG 2016, are not covered by the scope of application of the PRIIP-R. The following products in particular are included:
  - disability insurance
  - incapacity insurance
  - basic capability insurance
  - dread disease insurance
  - nursing care insurance
  - accident insurance
  - health insurance

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<sup>6</sup> Cf. Explanatory remarks about Article 5 nos. 59 to 64 of the draft version of the VersVertrG 2017.

<sup>7</sup> Annex V, Part 2.

<sup>8</sup> Article 2 (4) of the Delegated Regulation.

- Life insurance products where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity (Article 2 (2) b) PRIIP-R), are classed as **term life insurance products** and therefore do not fall within the scope of application of the PRIIP-R. This may also include life insurance products that primarily serve to cover against one of the aforementioned risks. The primary purpose of term life insurance products is to provide cover against a risk<sup>9</sup> rather than for investment or savings purposes. There is no harm in having a surrender value, provided that payments as a result of surrendering the policy constitute the repayment of surplus premiums due to reduction of the term or the repayment of surplus premiums as a result of the reduction in the length of the premium payment period.<sup>10</sup> The following products in particular are included<sup>11</sup>:
  - disability insurance
  - incapacity insurance
  - basic capability insurance
  - occupational invalidity insurance
  - insurance against the risk of death
  - burial provision in the form of whole life term insurance policy
  - nursing care insurance
  - dread disease insurance
  
- **Pension products**, that are recognised as products under national law, the purpose of which primarily serves to provide the investor with an income during their retirement, and which provide the investor with a claim to specific benefits (Article 2 (2) (e) PRIIP-R), should be listed in the Draft PRIIPS Enforcement Act (PRIIPs-VollzugsG-E). From the FMA's current view, the following product categories are excluded:
  - **State-sponsored retirement provision** pursuant to Article 108g EStG 1988 is already recognised on the basis of Article 2 para. 2 PRIIPs-VollzugsG-E as a pension product pursuant to Article 2 (2) e) PRIIP-R.
  - **Supplementary pension insurance** pursuant to Article 108b EStG 1988 is a type of pension insurance, for which the surrender, a capital benefit in the event of death and as a rule a capital settlement of accrued pensions is excluded. It is therefore intended for private old-age provision.
  - **Future safeguarding** pursuant to Article 3 para. 1 no. 15 point a EStG 1988 is also intended for old-age provision among other things. Employer contributions are used to safeguard the future of their employees. As a result of salary conversion the premium is paid by the employer by means of a deduction from the employee's salary. The term of the insurance shall not be allowed to end before a statutory old-age pension starts to be drawn.
  
- The following products, falling within the scope of application of Directive 2003/41/EC or Directive 2009/138/EC (Article 2 (2) f) PRIIP-R), are considered as officially recognised **occupational pension schemes** from the FMA's perspective:

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<sup>9</sup> In accordance with Guideline 5 of the Commission on the application of the PRIIP-R (Communication from the Commission [2017/C 218/02]) the assessment must take into account, in particular, the specific economic features and contractual terms and conditions of each product.

<sup>10</sup> Where payments in the event of the policy being surrendered exceed this amount, then a term life insurance policy could fall within the scope of application of the PRIIP-R.

<sup>11</sup> Provided that they have not already been excluded as being "non-life insurance products".

- **occupational pension group insurance** pursuant to Article 93 VAG 2016<sup>12</sup>, that is operated as a classical life insurance policy in the form of a group pension insurance policy and which the employer concludes for its employees and in which the employer makes the premium contributions. The exclusive purpose of the policy is as an old-age provision and a provision for surviving dependants or in addition as an invalidity provision. The policy holder is the employer.
- **Pensionskassen business**<sup>13</sup> pursuant to Article 1 para. 2 PKG is a form of company old-age provision. The employer voluntarily commits itself to pay in regular contributions towards the old-age pensions of its staff members.

Further products that essentially serve the purpose of old-age provision and for which the contractual partner are not retail investors, but employers offering their employees old-age provision in the form of a voluntary social benefit, with the result that such products do not fall within the scope of application of the PRIIP-R, are:

- **Pension reinsurance**, for safeguarding and financing of direct commitments granted by the employer towards employees;
  - **Severance re-insurance**<sup>14</sup>, for the financing of existing severance claims towards employees pursuant to Article 23 of the Employees Act (AngG; Angestelltengesetz);
  - **Outsourced Severance and Long Service Bonuses Insurance**<sup>15</sup>, in which employee severances claims and payments made by the employer to the employee in relation to the length of the employee's service are transferred to an insurance undertaking.
- When collecting and investing severance contributions and self-employed pension contributions by **corporate provision funds**<sup>16</sup> in accordance with the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons (BMSVG; Betriebliche Mitarbeiter- und Selbständigenvorsorgegesetz) pursuant to Article 1 no. 21 BWG, such products are not considered as life insurance products. Furthermore, the corporate provision fund is usually selected by the employer, who concludes an accession contract with a corporate provision fund.

## 2. ANCILLARY INSURANCE

If ancillary insurance products are also offered in conjunction with an insurance-based investment product, that are not insurance-based investment products, this fact should be referred to in the KID in the 'Other relevant information' section (Article 8 of the Delegated Regulation).<sup>17</sup> With regard to such ancillary insurance products, for products of the insurance classes pursuant to nos. 1 to 18 of Annex A regarding Article 7 para. 4 VAG 2016, an additional IPID (Insurance Product Information Document)<sup>18</sup> and for life insurance contracts pursuant to Article 5 no. 63 point b of the draft version

<sup>12</sup> See the explanatory remarks about Article 5 nos. 59 to 64 of the draft version of the VersVertrG 2017.

<sup>13</sup> For reasons of completeness, Pensionskassen transactions are also listed here.

<sup>14</sup> Cf. Margin Note 3368 of the Einkommensteuerrichtlinien 2000 (EStR 2000).

<sup>15</sup> Margin Note 3369a EStR 2000.

<sup>16</sup> For reasons of completeness, corporate provision funds are also listed here.

<sup>17</sup> See also guideline 19 of the Communication of the Commission on the application of the PRIIP-R (Communication from the Commission [2017/C 218/02]).

<sup>18</sup> For non-life insurance, a standardised information document is to be produced pursuant to Article 133 para. 3 VersVertrG 2017-E, which contains among items the main risks that are covered by insurance as well as the most important items that are excluded.

of the VersVertrG 2017 an additional LIPID (Life Insurance Product Information Document)<sup>19</sup> are to be drafted from the point of entry into force of these provisions.<sup>20</sup>

## B. TEMPORAL SCOPE OF APPLICATION

The PRIIP-R does not focus on the conclusion of the contract, but instead that a KID is made available to the policyholder promptly prior to their being **bound** by a contract or an offer.<sup>21</sup> For tariffs that were already offered prior to 1 January 2018, the PRIIP-R therefore applies with effect from 1 January 2018, i.e. for such tariffs a KID must be drawn up for new contracts and be made available to the insurance policyholder.<sup>22</sup>

For insurance-based investment products with different investment options, that are no longer offered after 1 January 2018, but for which the customer continues to have the possibility to exercise investment options, it is not necessary from the FMA's viewpoint to draw up a KID.

## III. GENERAL

### A. INFORMATION ABOUT THE TERM

Pursuant to Article 8 (3) (c) (iv) PRIIP-R and Article 2 (5) of the Delegated Regulation, information about the term of the PRIIP are required to be included in the section "What is this product?" While the sample template for the KID pursuant to Annex I of the Delegated Regulation does not contain a separate point for the "term", however, according to the wording of the Delegated Regulation and the PRIIP-R, information regarding the "term" of the PRIIP should be entered in this section.

### B. INFORMATION ABOUT COSTS

According to the German wording of the Article 5 (2) of the Delegated Regulation, PRIIP manufacturers shall specify the summary cost indicator of the total aggregated costs of the PRIIP as a single number in monetary **or** in percentage terms for the different time periods set out in Annex VI. The English version of the Delegated Regulation however states "in monetary **and** percentage terms". Since stating both a monetary figure and a percentage term corresponds to the requirements of Table 1 on "Cost over time" pursuant to Annex VII of the Delegated Regulation, values must be given both in **absolute terms** and as a **percentage** (corresponding to Article 5(2) of the Delegated Regulation).

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<sup>19</sup> For life insurance contracts, for which the benefits of the contract are payable only on death or in respect of incapacity for work due to injury, sickness or infirmity, a standardised information document is required to be created pursuant to Article 135c para. 3 VersVertrG 2017-E.

<sup>20</sup> Otherwise the regulations on cross selling set out in Article 134 VersVertrG 2017-E refer to insurance products, which are offered together with an ancillary product or service that is not insurance-based.

<sup>21</sup> Article 13 (1) PRIIP-R.

<sup>22</sup> See also guideline 5 of the Communication of the Commission on the application of the PRIIP-R (Communication from the Commission [2017/C 218/02]).

## C. RECOMMENDED HOLDING PERIOD

The KID contains under the headings:

- "What is this product?" a description of 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** (Article 8 (3) (c) (iii) PRIIP-R);
- "How long should I hold it and can I take money out early?" information about the **recommended** and, as applicable, prescribed **minimum holding period** (Article 8 (3) (g) (ii) PRIIP-R).

Article 2 (3) of the Delegated Regulation requires a description of the target market identified by the PRIIP manufacturer. The target group is determined by among other factors by considering their preferred investment horizon. Pursuant to Article 6 (a) of the Delegated Regulation, the KID is required to contain a brief description of the reasons for the selection of the recommended, or the minimum required, holding period.

The FMA assumes that the calculations will be based on uniform holding periods for the individual classes of products for the purposes of comparability. In the case of products with a fixed term, the fixed term is generally to be stated as being the recommended holding period.

## D. AGE-DEPENDENT KID

Under the heading "What is this product?" the KID contains a **description of 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** (Article 8 (3) (c) (iii) PRIIP-R); Article 2 (3) of the Delegated Regulation requires a description of the **target market** identified by the PRIIP manufacturer. It should therefore be geared to the typical target group (and the typical target age). The FMA assumes that uniform age information will be used for individual classes of products for the purposes of comparability.

## E. PRESENTATION OF THE PERFORMANCE SCENARIOS

Templates A and B pursuant to Annex V for the presentation of the performance scenarios use the terms "investment" and "premium". The Delegated Regulation does not however defined the terms that are used. For the purpose of ensuring comparability both between insurance-based investment products as well as with other investment products, for which the templates also use the term "investment", the **premium paid in** (including the risk premium) by the insurance policyholder should be entered as the "investment amount" and the **risk premium** entered as the "insurance premium".

The FMA assumes based on its current knowledge that the terms "investment" and "investment amount" used in Annex V Template B are to be understood as being synonyms.

## F. UPDATING THE KID

The PRIIP manufacturer shall **review** the information contained in the KID **regularly** and shall revise the information document where the review indicates that changes need to be made. The revised version shall be made available promptly (Article 10 (1) PRIIP-R).<sup>23</sup> For the purposes of further clarifying Article 10 (2) (d) PRIIP-R, Article 16 (3) of the Delegated Regulation defined the medium by which retail investors are to be informed about a KID having been updated. Article 16 (3) of the Delegated Regulation specifies that the PRIIP manufacturer shall publish the **revised key information document on its website**. In accordance with recital no. 22 of the Delegated Regulation the KID should be easy to find and, where possible, the PRIIP manufacturer should inform retail investors (e.g. by e-mail), when a KID has been revised.<sup>24</sup>

From the FMA's point of view, the submission of the updated KID to retail investor is generally desirable. However, the publication of the updated KID on the website of the PRIIP manufacturer may also be considered as sufficient, since an insurance undertaking is in any bound to observe the ongoing information requirements pursuant to Article 135d VersVertrG 2017-E, in particular regarding material change in the risk classification of an investment fund for fund-linked life insurance plans, and is required to report at least yearly about all charges and fees pursuant to Article 135c para. 1 no. 6 point a VersVertrG 2017-E and about the effects of deviations of the current values compared to the predicted values at the time of the contract being concluded.

## G. CIVIL LAW ASPECTS

A PRIIP manufacturer shall not become liable under civil law solely on the basis of the KID, unless the key information document is misleading, inaccurate or inconsistent with the relevant parts of the legally binding pre-contractual documentation and the contractual documentation, or is inconsistent with the conditions set out in the PRIIP-R. Compensation claims are to be assessed in accordance with national law (Article 11 PRIIP-R).<sup>25</sup> Articles 130, 132 and 135c VersVertrG 2017-E contain independent, and to a certain extent customised, information requirements. The KID on the other hand contains generic information, already meaning that the information requirements pursuant to VAG 2016 and the PRIIP-R are not identical. Regarding the assessment of the issue of whether the customer may assert other claims for damages, is a civil law issue, falling solely under the competence of civil courts. This also applies to circumstances where the WAG 2018 is applicable in addition to the PRIIP-R.

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<sup>23</sup> See also Article 15 of the Delegated Regulation

<sup>24</sup> See also guideline 23 of the Communication of the Commission on the application of the PRIIP-R (Communication from the Commission [2017/C 218/02]).

<sup>25</sup> See also guideline 15 of the Communication of the Commission on the application of the PRIIP-R (2017/C 218/02).

## H. COMPLEX INSURANCE-BASED INVESTMENT PRODUCTS

A comprehension alert<sup>26</sup> is required, if a product

- is accompanied by investment risks from financial instruments, that are considered as complex financial instruments within the meaning of Directive 2014/65/EU (MiFID II) and which have a structure, that makes it difficult for the policyholder to understand the risks inherent to the investment, or,
- consists of other complex insurance-based investments.

The FMA currently assumes that life insurance contracts entitled to participate in profits from direct business, for which a special *Deckungsstock* group pursuant to Article 300 para. 1 no. 1 VAG 2016 (**classical life insurance**) has been established, may also be classified as non-complex insurance-based investment products. Documented proof must, however, be given on a case-by-case basis that all the criteria of Article 16 of Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017<sup>27</sup> (guaranteed minimum maturity value which is at least the amount paid by the customer after deduction of legitimate costs; no clause, condition or trigger incorporated that allows the insurance undertaking to materially alter the nature, risk, or pay-out profile of the insurance-based investment product; options to surrender at a value that is available to the customer; no charges that have the effect that surrendering may cause unreasonable detriment to arise for the customer; no structure which makes it difficult for the customer to understand the risks involved) are fulfilled.<sup>28</sup> Changes to the (guaranteed) maturity value or surrender value or capital upon death based on participation in profits shall not be classified as a structure which makes it difficult for the customer to understand the risks involved.<sup>29</sup>

Furthermore, the FMA currently assumes that **unit-linked and index-linked life insurance products**, for which separate *Deckungsstock* groups pursuant to Article 300 para. 1 nos. 3 and 4 VAG 2016 have been established, may also be classified as non-complex insurance-based investment products, provided that their underlying financial instruments are considered as being non-complex financial instruments as defined in MiFID II and such contracts do not have a structure that makes it difficult for the policyholder to understand the risks associated with the investment.<sup>30</sup> The assessment of the criteria from the EIOPA Guidelines (EIOPA-17/651) must be recorded on a case-by-case basis.

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<sup>26</sup> Point (a) of the second subparagraph of Article 1 of the Delegated Regulation refers, with regard to the comprehension alert pursuant to Article 8 (3) (b) PRIIP-R, to Article 30 (3) (a) of Directive (EU) 2016/97 on Insurance Distribution (IDD).

<sup>27</sup> Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products.

<sup>28</sup> Furthermore, Guidelines 6 to 8 of the EIOPA Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved (EIOPA-17/651) may also be applied for this assessment.

<sup>29</sup> Guideline 6 of the EIOPA Guidelines (EIOPA-17/651).

<sup>30</sup> Furthermore, Guidelines 1 to 5 of the EIOPA Guidelines (EIOPA-17/651) may be applied for the assessment.

## IV. UNIT-LINKED LIFE INSURANCE

### INSURANCE-BASED INVESTMENT PRODUCTS WITH INVESTMENT OPTIONS

#### 1. PERFORMANCE DESCRIPTION IN THE GENERIC KID

Pursuant to Article 12 (1) of the Delegated Regulation by way of derogation from Article 3 (2) (a) and para. (3) PRIIP manufacturers specify a brief description on how the performance of the PRIIP as a whole depends on the underlying investment options. The presentation pursuant to Article 3 (3) of the Delegated Regulation requiring four performance scenarios is therefore not required in the generic KID.

#### 2. DEATH SCENARIO IN THE GENERIC KID

A death scenario must be presented in the generic KID, but a presentation of four performance scenarios is not necessary. Article 12 (1) of the Delegated Regulation stipulates which information is to be presented in the generic KID by way of derogation (from the general regulations) from Article 3 (2) (a) (total risk indicator) and para. (3) (four performance scenarios). Since it is not possible to assume from this list about Article 3 (4) (the performance scenario, from which the insurance benefit is reflected, that the beneficiary receives in the event of the insured event occurring), it is therefore to be assumed, that only death scenarios are therefore required to be given in the generic KID.