



PRIIPs newsletter 1/2018 – 25 January 2018

Provision of a key information document required by PRIIP regulation in the English language under certain circumstances

In December 2017, the Financial Supervisory Authority (the FIN-FSA) stated in its PRIIPs newsletter that the languages accepted for the key investor documents for PRIIPs offered in Finland shall be Finnish and Swedish. It was emphasised in the position taken by the FIN-FSA's that the foundation of PRIIPs regulation is the need of private investors to receive the key information in a convenient and comprehensible format. This objective is best achieved when the information is given in the private investor's native language. In the same context, the FIN-FSA also stated it would discuss the matter of language with market participants and assess whether such circumstances exist where the use of a key information document in English would be justified.

When the application of regulation on PRIIPs began on 1 January 2018, it turned out that the range of products available to private investors was reduced in some categories. This was due to two reasons. In some cases, there was no Finnish or Swedish translation of the key information document. In some cases, there was no key information document required by PRIIPs regulation in the first place.

Use of a key information document in English

A key information document must be drawn up and published for products within the scope of application of PRIIPs regulation whenever these products are offered to retail investors. In accordance with the PRIIPs Regulation, the key information document shall be written in a language which is an official language used in the member state or another language accepted by the competent authorities.

In the FIN-FSA's opinion, the key information document could be made available in English if the following prerequisites are met:

1. The distributor of the product must ensure that the customer can understand the key features and risks of the PRIIP in accordance with the PRIIPs Regulation, and
2. The service provider must comply with other regulatory requirements, for example regarding the assessment of the target market of the product (product governance) and requirements on customer-specific assessment of appropriateness.

If a PRIIP is being promoted in the official language of a member state, the key information document must be prepared in a comparable language. Hence, the use of an English-language key information document in Finland is only possible if the product is not promoted in Finnish or Swedish.

The translation of a key information document may also be made by a distributor of the product. However, the translation of the key information document must be published on the website of the manufacturer of the PRIIP, and the manufacturer is liable for the accuracy of the translation.

This position may have to be adjusted at a later stage for example due to a subsequent position taken by the European Securities and Markets Authority (ESMA). The FIN-FSA will continue the discussion with the sector on other necessary interpretations and positions.

Related regulation

PRIIPs Regulation (1286/2014)

Article 5, paragraph 1 (Drawing up the key information document)

Before a PRIIP is made available to retail investors, the PRIIP manufacturer shall draw up for that product a key information document in accordance with the requirements of this Regulation and shall publish the document on its website.

Article 7 (Language of the key information document)

The key information document shall be written in the official languages, or in one of the official languages, used in the part of the Member State where the PRIIP is distributed, or in another language accepted by the competent authorities of that Member State, or where it has been written in a different language, it shall be translated into one of these languages.

The translation shall faithfully and accurately reflect the content of the original key information document.

If a PRIIP is promoted in a Member State through marketing documents written in one or more official languages of that Member State, the key information document shall at least be written in the corresponding official languages.

Article 11, paragraph 1 (Liability for the key information document and its translation)

The PRIIP manufacturer shall not incur civil liability solely on the basis of the key information document, including any translation thereof, unless it is misleading,

inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the requirements laid down in Article 8.

Article 32 (Transition period for funds)

Management companies as defined in Article 2(1)(b) of Directive 2009/65/EC, investment companies as referred to in Article 27 thereof and persons advising on, or selling, units of UCITS as referred to in Article 1(2) thereof shall be exempt from the obligations under this Regulation until 31 December 2019.

When a Member State applies rules on the format and content of the key information document, as laid down in Articles 78 to 81 of Directive 2009/65/EC, to non-UCITS funds offered to retail investors, the exemption laid down in paragraph 1 of this Article shall apply to management companies, investment companies and persons advising on, or selling, units of such funds to retail investors.

Commission notice

(14) Translations of key information documents

In accordance with Article 7 of the Regulation, the key information document shall be written in one of the official languages of the Member State where the PRIIP is distributed, in order for it to be understood by private investors. The fact that the website of a person advising on or selling a PRIIP may also be used by private investors from other countries than those where the person is providing the PRIIP (ie private investors to which the PRIIP is not being offered to) does not mean that they key information document should also be given in the languages of such other member states. The regulation does not specifically provide, which party should be responsible for translation of the key information document in circumstances where the PRIIP is offered cross-border. Article 11 of the Regulation however states that the PRIIP manufacturer is liable for the accuracy of the translation. In addition, Article 5(1) of the Regulation provides that translations of the key investor document must be published on the website of the PRIIP manufacturer.

Further information

Questions concerning PRIIPS may be sent to the FIN-FSA to PRIIPSquestions@fiva.fi.

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