A&L Goodbody

Does your Irish fund need a PRIIP KID?

PRIIPs Regulation

The EU Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products (EU1286/2014) (the PRIIPs Regulation) will take effect on 1 January 2018.

A summary of the PRIIPs Regulation to help you make an initial assessment on whether you are in scope to produce a PRIIP KID from 1 January 2018.

What is a PRIIP KID?

A PRIIP KID is a 3 page document which provides key information to retail investors in relation to the nature, risks, costs, potential gains and losses of a PRIIP. The KID must be provided in good time to investors prior to investment in the AIF. It allows the retail investor to understand the PRIIP and compare the PRIIP to other products enabling the retail investor to make an informed investment decision.

There are strict technical requirements about the form, content and length of the KID. Performance scenarios and a risk/reward indicator are examples of requirements to be included in the KID. The KID must be reviewed at least annually but more frequent reviews are required where changes to the product affect the information in the KID. If a revision requires an update to the KID, it must be published on the product manufacturer's website without undue delay.

Following a long journey through the European Union legislative process, the EU Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products (EU1286/2014) (the PRIIPs Regulation) will take effect on 1 January 2018. Irish regulated collective investment schemes, RIAIFs, PIFs, QIAIFs and UCITS, are products which fall within the definition of a PRIIP. Any Irish RIAIF, PIF or QIAIF (each an **AIF**) which is **made available** to **retail investors** within the **EEA** after **1 January 2018** must prepare a key investor document (a **PRIIP KID**) and publish it on its website. UCITS may continue to provide a UCITS KIID until 31 December 2019 when, subject to final confirmation, UCITS will have to provide a PRIIP KID.

Overleaf is a decision tree to help you make an initial assessment whether your Irish regulated collective investment scheme and / or its alterative investment fund manager (**AIFM**) or management company is in scope to produce a PRIIP KID from 1 January 2018. It should be used in the context of all the comments and observations in this briefing, which will give you a better understanding of the requirements to which you may be subject or your options to be clear that the PRIIPs Regulation does not apply to your Irish fund.

> *UCITS are exempt from the provisions of the PRIIPs Regulation until 31 December 2019.*

To whom does the PRIIPs Regulation apply?

The PRIIPs Regulation applies to persons who (i) manufacture PRIIPs for sale to retail investors in the EEA or make changes to an existing PRIIP or (ii) advise on or sell PRIIPs to retail investors in the EEA. Therefore AIFs and their AIFMs and management companies are in scope.

What is a retail investor?

Any person who does not fall within the definition of "professional client" under MiFID will be a retail investor.

What does "made available" to retail investors mean?

There has been debate on the meaning of "made available" the context of the PRIIPs regime and it is not defined. We can conclude that marketing, distributing, selling or advising on a PRIIP is considered to be making the PRIIP available. See also the comments below relating to reverse solicitation, top-ups and where an AIF is closed for subscription from 1 January 2018.

What if my fund is a QIAIF?

As a QIAIF is not intended for retail investors one could make the assumption that QIAIFs fall outside the scope of the PRIIPs Regulation. Indeed, the pan-European marketing passport for AIFs under AIFMD extends only to marketing to professional investors as defined under MiFID. So we envisage in most scenarios QIAIFs should be out of scope in terms of the intended target market subject to taking some of the suggested steps below. However, as the definition of a "qualifying investor" in the Central Bank's AIF Rulebook technically is wider than the definition of "professional client" under MiFID II, retail investors for the purpose of the PRIIPs Regulation may be investors in a QIAIF. The categories at (b) and (c) of the qualifying investor definition are not in the MiFID II definition of professional client. Investors availing of the accredited employee exemption permitted to invest in the QIAIF may be EEA retail investors. These are examples of categories of investors who could be considered retail investors for the purposes of the PRIIPs Regulation and if no analysis or further steps, such as those described below are taken by the QIAIF, it may be the case that a PRIIP KID will be required.

What if the EEA retail investor approaches the AIF?

There is no exemption for reverse solicitation in the PRIIPs Regulation. The requirement to prepare and provide a PRIIP KID applies even if the product is not marketed to retail investors, is sold without advice provided to the retail investor or is acquired by the retail investor on its own initiative by direct approach.

Does the requirement apply to top-ups from existing investors?

In our view, if an existing investor who is not a professional client subscribes for additional shares after 1 January 2018, it is prudent to assume that the requirement to prepare and provide a PRIIP KID will apply.

What if my AIF is closed to subscription from 1 January 2018?

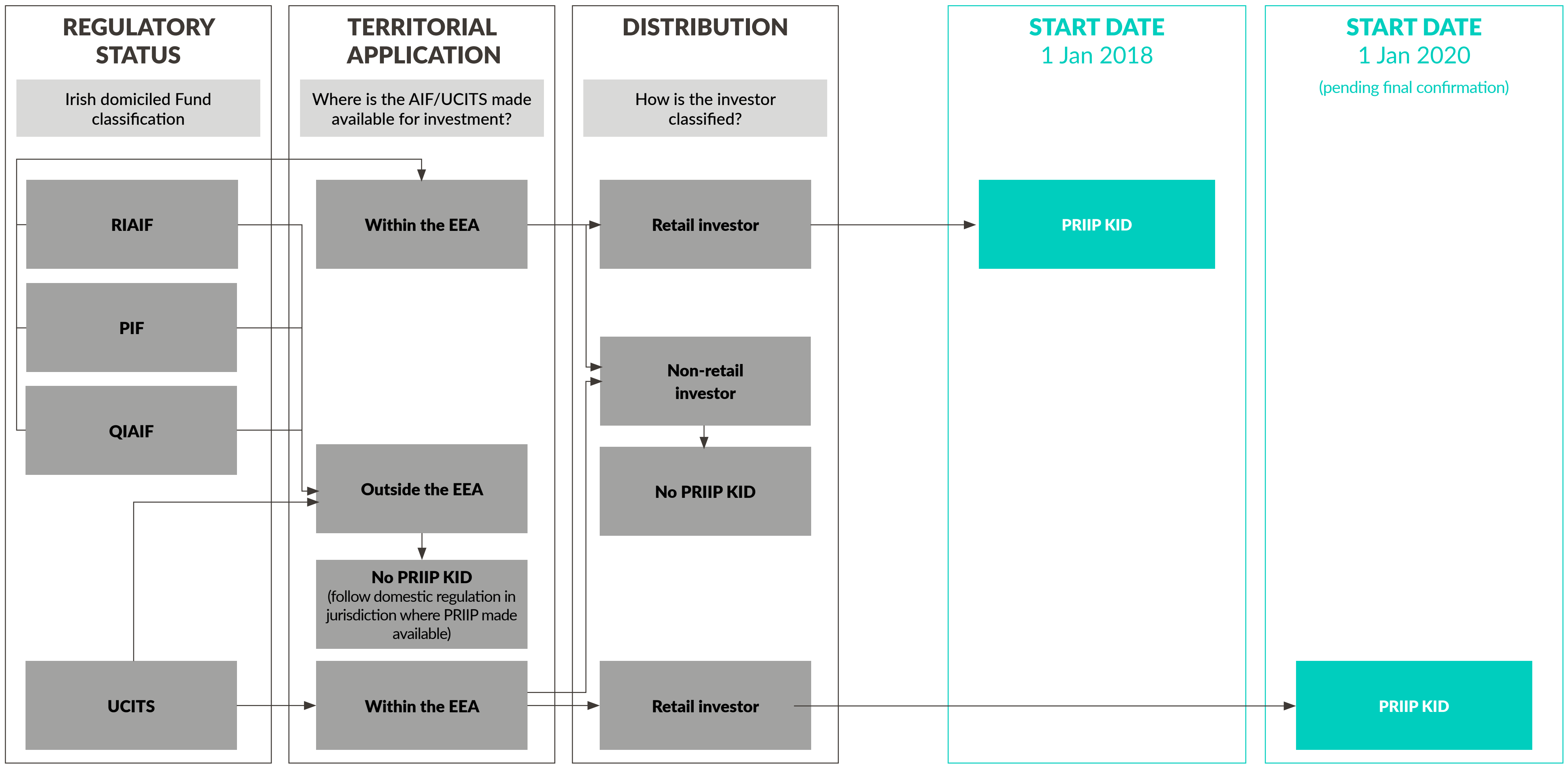
Where EEA retail investors cannot make further investments in the AIF after 31 December 2017 our view is that it is not being made available and there is no requirement to produce a PRIIP KID. The investors can redeem after that date without requirement for a KID.

What if my AIF is wrapped into another PRIIP?

If your AIF is wrapped into another PRIIP and that PRIIP is made available to EEA retail investors, it is likely that the manufacturer of the wrapper PRIIP will seek detailed information in respect of the AIF in order to prepare a PRIIP KID. EFAMA have endorsed a European PRIIPs Template (EPT) in this regard to provide a standardised approach for manufacturers and distributors.

Decision Tree

Decision tree to help you make an initial assessment whether your Irish regulated collective investment scheme and / or its alterative investment fund manager (AIFM) or management company is in scope to produce a PRIIP KID from 1 January 2018.



What about UCITS?

UCITS which are subject to the requirement to produce a UCITS KIID are exempt from the provisions of the PRIIPs Regulation until 31 December 2019 and can continue to prepare a UCITS KIID instead of a PRIIP KID during this transitional period. The European Commission will review whether this transitional period applying to UCITS should be extended or other options for UCITS considered.

UCITS which are wrapped in a PRIIP, such as an insurance linked product, where the UCITS KIID does not provide all the information required by the wrapper PRIIP, the UCITS and its manufacturer may be asked for additional information.

What steps can I take to ensure that the requirement to produce a PRIIP KID does not apply?

Some options are to:

1/ Limit investment in the AIF to investors who are per se or elective professional clients under MiFID II;

2/ Make the AIF available solely to non-EEA investors as strictly speaking no action is then required;

3/ Ensure all distribution activities clearly exclude EEA retail investors.

For the first two points, these restrictions could be provided for in the AIF's application form and top-up form. It would also be possible to update the AIF prospectus. However bear in mind that QIAIFs are required by the Central Bank to include in their prospectus the prescribed definition of qualifying investor. The definition of MiFID II professional investor would need to override that to escape

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application of the PRIIPs Regulation or perhaps the entry conditions for available classes might contain an appropriate eligibility condition.

If an AIF has a mix of EEA and non-EEA retail investors, then a KID would only need to be prepared for the EEA retail investors.

As regards distribution activities, putting in place and enforcing the restrictions is likely to be a combination of contractual obligation between the AIF and AIFM and its distributors and practical measures at distributor level to ensure EEA retail investors are excluded.

Are there any other exemptions in the PRIIPs Regulation?

Where member states have local rules requiring non-UCITS funds offered to retail investors to be accompanied by a UCITS KIID (for example Luxembourg and the UK) then these non-UCITS funds can continue to provide the UCITS KIID to retail investors until 31 January 2019. The Central Bank to date has not required Irish AIFs offered to retail investors to produce a UCITS KIID.

What should I do next?

1/ Profile the investor base of the AIF to establish if there are any EEA retail investors

2/ Examine any distribution arrangements to see if there is scope for EEA retail investors to invest in the AIF via those arrangements

3/ Establish if it is possible and appropriate to take any of the steps described above to take your AIF outside the scope of the PRIIPs Regulation

4/ If your AIF has EEA retail investors and you intend to make the AIF available to retail investors after 1 January 2018, make arrangements to prepare a PRIIP KID for those investors

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