



## Regulatory Newsflash

### FSMA Consultation on the ex-ante notification of the Key Information Document (KID)

#### Introduction

On 17 July the Financial Services and Markets Authority (FSMA) published a consultation on a preliminary draft Royal Decree (RD) on the clarification of the requirement of ex-ante notification of the Key Information Document (KID) to the FSMA ([NL/FR](#)).

This RD will execute article 37sexies of the Act of 2 August 2002 on the supervision of the financial sector and the financial services (hereinafter, the Financial Supervision Act).

Article 37sexies of the Financial Supervision Act will enter into force on 1 January 2018 and imposes an ex-ante notification requirement of the KID towards the FSMA. Through this article, use is made of the possibility included in article 5(2) of Regulation (EU) 1286/2014 of the European Parliament and

of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs).

The preliminary draft RD clarifies certain topics related to the persons responsible for the ex-ante notification as well as the modalities and the timing of the notification. The Royal Decree also alters the Royal Decree of 14 November 2003 on the life insurance activities (RD Life) and the Royal Decree of 25 of April 2014 on certain information requirements for the distribution of financial products to retail clients (Transversal RD).

Apart from that, the FSMA wishes to use this consultation to gauge the market participants' opinion on the provision of information on costs and charges in publicity related to the distribution of units in undertakings for collective investments.

## **Content of the preliminary draft RD**

### **Persons responsible for ex-ante notification**

The preliminary RD distinguishes two situations:

- Where the PRIIP-manufacturer distributes the PRIIP to retail clients in Belgium himself or via other distributors on which he appeals, the PRIIP-manufacturer is responsible for the ex-ante notification.
- Where a third person, not appointed by the PRIIP-manufacturer, distributes a PRIIP to retail clients in Belgium himself or via other persons on which he appeals, this third person will be responsible for the ex-ante notification.

### **Timing**

The notification has to be done before the provision of the KID to retail clients in relation to the distribution of the PRIIP in Belgium.

In case the distribution in Belgium concerns a public offering of investment instruments as described in the Act of 16 June 2006 on the public offering of investment instruments and the admission to trading on a regulated market of investment instruments (hereinafter, the Act of 16 June 2006) the KID should be provided to the FSMA at least 5 business days before the start of the public offering or at the moment of the provision of the marketing material to the FSMA for approval where this would be earlier.

### **Modalities**

The KID should be provided to the FSMA electronically in one of Belgium's official languages or a language accepted by the FSMA. When the KID relates to a public offering as described in the Act of 16 June 2006 and the provision to the FSMA is combined with the provision of marketing material for approval, the language of the KID should be the same as the language of the marketing material.

### **Amendments of the RD Life and the Transversal RD**

The preliminary draft RD also abolishes Title 2 of the Transversal RD, that relates to the requirement to provide an information document when

distributing financial products, together with certain articles in Title 3 relating to the voluntary provision of information documents and to the prior approval of marketing material for insurance products. In addition, the preliminary draft RD provides in a technical amendment of the RD Life in order to be aligned with the PRIIPs requirements.

### **Entry into force**

The RD would enter into force together with the PRIIPs Regulation on 1 January 2018.

### **Market participants' opinion on information on costs and charges**

With this consultation the FSMA also gauges market participants' opinion on the provision of information on costs and charges in publicity related to the distribution of units in undertakings for collective investments (UCIs).

Until 31 December 2019 no PRIIPs KID should be provided in relation to the distribution of units in UCITS or public AIFs but a Key Investor Information Document (UCITS/AIF KIID) will continue to be required for those products. The calculation of costs and charges to be disclosed in the UCITS/AIF KIID, which does not contain transactions costs, differs from the calculation of costs and charges related to UCIs to be disclosed to the client according to MiFID II which should contain all costs and charges, including transaction costs.

MiFID II further requires the information provided in publicity to be compliant with other information provided to the client in relation to the provision of an investment or ancillary service.

For UCIs the client will be provided with a UCITS/AIF KIID, containing costs and charges, as well as an overview of costs and charges required by MiFID II, which will differ from the costs and charges included in the UCITS/AIF KIID following the different calculation methodology. The question now raises whether information on costs and charges provided in any publicity or marketing material should be based on the costs and charges disclosed in the UCITS/AIF KIID or on the costs and charges disclosed following MiFID II requirements. Without any timely position on a European level national guidance on this question might be considered.

### **Participate to the consultation**

The consultation runs from 17 July until 31 August 2017. Market participants can send their insights and remarks to the FSMA via the FSMA's website ([NL/FR](#)).

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## Contact

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