

EUROPEAN COMMISSION ADOPTS DELEGATED REGULATION ON THE TECHNICAL STANDARDS SUPPLEMENTING THE PRIIPS REGULATION

On Thursday, June 30, 2016 the European Commission finally adopted a Delegated Regulation covering Regulatory Technical Standards (RTS), thereby supplementing the PRIIPs (Package Retail and Insurance-Based Investment Products) Regulation.

BACKGROUND

Regulation (EU) No 1286/2014 of November 26, 2014 (the PRIIPs Regulation) is the work of a Joint Committee made up of the three European Supervisory Authorities (ESAs) responsible for financial markets and the banking and insurance sectors. It aims to create a standardised Key Information Document for investors wishing to invest in packaged retail products: the KID.

The final draft RTS, produced in application of the PRIIPs Regulation, had been made available on March 31, 2016. The Delegated Regulation, which was adopted on June 30, is by and large the same as the final draft version and there are no major changes. In attachment are a template of the KID and an explanation of the methodology used to calculate the indicators (in particular for risk) mentioned in the KID.

This adoption on the part of the Commission, despite the fact that the European Parliament may have wanted to make certain changes, leaves the Council and the Parliament with no other option but to either ratify or reject the text. In this context it must be borne in mind that all requests to postpone the implementation date (January 1, 2017) have been refused.

A technical workshop dealing with the implementation of the PRIIPs Regulation and its RTS is scheduled for July 11 with a view to drawing up the level-3 regulations, which should be in the question/answer form and which the European Supervisory Authorities intend to publish this summer.

THE TEXT AND THE ISSUES IT RAISES

The PRIIPs Regulation requires, for all life insurance contracts, that prospective investors receive a KID which describes in a clear and understandable manner the features of the contract, including risk indicators, costs and the potential return of the products.

This approach is expected to result in major implementation difficulties with regard to the Luxembourg market because it does not give adequate consideration to the concept of multi-

support other than through the notion of an underlying investment option. On top of this, it does not seem to be particularly well suited to dealing with dedicated internal funds, which are specific to Luxembourg.

Each investment option should be the subject of the provision of information which includes at least the indicators required for the KID. Regardless of the uncertainties relating to the scope, it seems clear that for most contracts, the Regulation will require the drawing up of a very large number of documents. And this implies potentially complex calculations. Moreover, these documents will have to be regularly updated: substantial archiving and documentation work will be necessary to be able to prove that the insurer has properly fulfilled its obligation to provide information. As such, the management of this standard over time generates additional challenges in the areas of complexity and legal certainty.

RULING BY THE PARIS COURT OF APPEAL ON FORMULA-BASED FUNDS USED IN A LIFE INSURANCE CONTEXT

It is in this increasingly demanding regulatory framework regarding the marketing of unit-linked products that on June 21 a [ruling by the Paris Court of Appeal](#) stated that a formula-based fund with an EMTN (European Medium Term Note) without a full guarantee as its underlying is not eligible for inclusion in a life insurance contract.

This ruling, provided that it is not so much based on the risk associated with the product as on the incorrect description of the underlying in relation to the French Insurance Code, could, according to certain observers, prompt French insured parties to opt for contracts under Luxembourg law. Specifically, in Luxembourg this type of fund is not directly eligible for unit-linked products and is therefore lodged in internal funds.

REFERENCES:

- [Draft version of the Delegated Regulation of 30/06/2016](#)
- [Annex containing, among other things, the template for the KID and the calculation methodology for indicators](#)
- [PRIIPs Regulation \(EU\) No 1286/2014 of 26/11/2014](#)
- [Information on the workshop of 11/07/2016](#)
- [Letter from the ESAs on the level-three regulations](#)

WHAT FORSIDES OFFERS

- Forsides has the expertise and competences to help you implement the PRIIPs regulation
- Impact of the regulation on the product range
- Inventory of the documentation to be drawn up
- Methodology for the calculations to be put in place
- Drawing up of the documentation
- Assistance with contracting activities

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