

Do Issuers of Crypto Assets Require a PRIIPs KID in Addition to the MiCAR White Paper?

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Overview of the PRIIPs KID Mandate

- The EU Regulation No. 1286/2014 (PRIIPs Regulation) has required issuers of packaged retail investment products (PRIIPs) to prepare and publish a Key Information Document (PRIIPs KID) for over a decade.
- The primary goal of the PRIIPs KID is to offer retail investors a **clear and easily understandable overview** of the underlying investment product.
- The document must be concise, not exceeding three A4 pages, and contain essential key information and warnings required by the regulation.
- The applicability of the PRIIPs Regulation is generally independent of the investment product's legal form, meaning it might cover units in investment funds or asset investments.
- The central question is whether issuers of crypto assets must prepare a PRIIPs KID for a token issue, particularly since the regulation preceded MiCAR.

PRIIPs Applicability vs. Other Regulations

- The obligation to prepare a PRIIPs KID is fundamentally irrelevant to the existence of prospectus requirements under other regulations, such as the Prospectus Regulation or the VermAnlG (German Asset Investment Act).
- The obligation to prepare and publish a PRIIPs KID can therefore exist **in addition to** the obligation to prepare a prospectus.
- Even investment products that are fundamentally unregulated may still fall under the PRIIPs Regulation if they satisfy its requirements.
- If a crypto asset meets the defined criteria, the obligations under the PRIIPs Regulation apply in addition to the obligations imposed by MiCAR.

Defining a Packaged Retail Investment Product (PRIIP)

- The existence of a PRIIP hinges on the requirement that the amount to be repaid to the retail investor is subject to fluctuations.
- These fluctuations must result from the performance of reference values that the retail investor has not directly acquired.
- According to BaFin's administrative practice, only **external reference values** are relevant in this context.
- External reference values include the value of precious metals, investment products from third-party providers, or crypto assets.
- Internal reference values, such as issuer- or group-related profit figures (e.g., EBITDA or profit after tax), do not constitute a PRIIP.

Qualification of Crypto Assets as PRIIPs

- Crypto assets within the meaning of Art. 3 (1) No. 5 MiCAR can qualify as PRIIPs if certain conditions are met.
- The crypto asset must be distributed to retail investors.
- The product must provide for a repayment to the investor.
- The amount of this repayment must depend on an external reference value.
- **"Repayment"** is broadly defined under the PRIIPs Regulation to include genuine repayment claims at the end of a term, as well as interest or other returns derived from the investment product during the period of ownership.

Dual Compliance and Consistency Requirements

- In cases where a crypto asset meets the requirements for a PRIIP, the issuer, and potentially persons advising on or selling the asset, must prepare, publish, and make the PRIIPs KID available to investors in advance of subscription.
- Issuers must therefore take both the EU regulations—**PRIIPs and MiCAR**—into account when planning a token issuance.
- Compliance may require the simultaneous creation and publication of both the PRIIPs KID and the MiCAR crypto-asset white paper.
- Both regulations impose strict requirements regarding advertising and marketing communications, prohibiting any advertising statement from relativizing or contradicting the information in the PRIIPs KID or the white paper.
- It is of considerable importance to ensure that the **crypto-asset white paper and the key information document are consistent** if the PRIIPs Regulation is applicable to the token issuance.

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