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NOTE

From:	Presidency
To	Delegations
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on key information documents for packaged retail investment products (PRIPs) *- General approach*

Delegations will find below an updated Presidency compromise on the above Commission proposal, with a view to the Coreper 2 meeting of 26 June.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on key information documents for packaged retail investment products (PRIPs)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Retail investors are increasingly offered a wide variety of different types of packaged retail investment products (PRIPs) when they consider making an investment. These products often provide specific investment solutions tailored to the needs of retail investors, but are frequently complex and difficult to understand. Existing disclosures to investors for such PRIPs are uncoordinated and often fail to aid retail investors compare between the different products, and in comprehending their features. As a consequence, retail investors have often made investments with risks and costs that were not fully understood by those investors, and have thereby on occasion suffered unforeseen losses.

(2) Improving provisions on transparency of PRIPs offered to retail investors is an important investor protection measure and a precondition for rebuilding confidence of retail investors in the financial market. First steps in this direction have been already been taken at Union level through the development of the key investor information regime established in Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[1].

(3) Different rules that vary according to the industry that offers the PRIPs and national regulation in this area create an un-level playing field between different products and distribution channels, erecting additional barriers to a Single Market in financial services and products. Member States have already taken divergent and uncoordinated action to address shortcomings in investor protection measures and it is likely that this development would continue. Divergent approaches to PRIPs disclosures impede the development of a level playing field between different PRIPs manufacturers and those advising on or selling these products and thus distort competition. It would also create an uneven level of investor protection within the European Union. Such divergences represent an obstacle to the establishment and smooth functioning of the Single Market. Consequently, the appropriate legal basis is Article 114 TFEU, as interpreted in accordance with the consistent case law of the Court of Justice of the European Union.

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1 OJ L 302, 17.11.2009, p.32.

(4) It is necessary to establish uniform rules at the level of the Union applying across all participants of the PRIPs market on transparency so as to prevent divergences. A Regulation is necessary to ensure that a common standard for key information documents is established in such a uniform fashion so as to be able to harmonise the format and the content of these documents. The directly applicable rules of a Regulation should ensure that all those advising on or selling PRIPs are subject to uniform requirements in relation to the provision of the key information document to retail investors. This regulation has no effect on the supervision of advertising documents nor on product intervention measures.

(5) Whilst improving PRIP disclosures is essential in rebuilding the trust of retail investors in the financial markets, effectively regulated sales processes for these products are equally important. This Regulation is complementary to measures on distribution in the Directive 2004/39/EC of the European Parliament and the Council. It is also complementary to measures taken on the distribution of insurance product in Directive 2002/92/EC of the European Parliament and of the Council.

(6) This Regulation should apply to all products regardless of their form or construction that are manufactured by the financial services industry to provide investment opportunities to retail investors, where the amount repayable to the investor is subject to fluctuations because of exposure to reference values, or in the performance of one or more assets which are not directly purchased by the investor. These products shall be known as PRIPs for the purposes of this regulation and should include, among others, such investment products as investment funds, life insurance policies with an investment element and structured deposits. For these products, investments are not of a direct kind achieved when buying or holding assets themselves. Instead these products intercede between the investor and the markets through a process of "packaging", wrapping or bundling together assets so as to create different exposures, provide different product features, or achieve different cost structures as compared with a direct holding. Such "packaging" can allow retail investors to engage in investment strategies that would otherwise be inaccessible or impractical, but can also require additional information to be made available, in particular to enable comparisons between different ways of packaging investments.

(7) In order to ensure this Regulation applies solely to such PRIPs, insurance products that do not offer investment opportunities and deposits solely exposed to interest rates should thereby be excluded from the scope of the Regulation. To clarify, this Regulation does not include products without a specific investment purpose or objective but which may provide a variable bonus or surplus yield such as life protection policies with a bonus element. In the case of life insurance products, the term "capital" shall mean capital that is invested on the request of the retail investor. In addition, any deposit or certificates which represent traditional deposits, other than structured deposits as defined in Article 4 of Directive 2004/39/EC are excluded from the scope of this Regulation. Assets that would be held directly, such as corporate shares or sovereign bonds, are not packaged investment products, and should therefore be excluded. Investment funds dedicated to institutional investors are not within the scope of this Regulation since they are not for sale to retail investors. Individual and occupational pension products, having the primary purpose of providing the investor an income in retirement, are excluded from the scope of this Regulation, in consideration of their peculiarities and objectives.

(7a) This Regulation does not prejudice the right of Member States to regulate the provision of key information on products that fall outside the scope of this Regulation. In accordance with their mandate for consumer protection set in article 9 of Regulation [EBA, ESMA, EIOPA], the ESAs should monitor the products which are excluded from the scope of this Regulation and, where appropriate, issue guidelines to address any problem which might be identified. Such guidelines should be taken into account in the review, to be conducted four years after the entry into force of this Regulation, on the possible extension of the scope and the elimination of certain exemptions.

(8) In order to provide clarity on the relationship between the obligations established by this Regulation and obligations established by other legislation requiring the provision of information to investors, including but not limited to Directive 2003/71/EC of the European Parliament and the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34,and Directive 2009/138/EC, it is necessary to establish that these Directives continue to apply in addition to this Regulation except, where relevant, in the case of Directive 2009/138/EC.

(8a) In order to ensure orderly and effective supervision of the requirements in this Regulation, Member States shall designate the competent authorities responsible for supervising compliance with the requirements of this Regulation. In many cases competent authorities will already be designated for the supervision of other obligations falling on PRIP manufacturers, sellers or advisors, arising from other provisions of national and Union law.

(9) PRIPs manufacturers – such as fund managers, insurance undertakings, issuers of securities, credit institutions or investment firms – should draw up the key information document for the PRIPs they manufacture, as they are in the best position to know the product and are responsible for it. The document should be drawn up by the PRIP manufacturer before the product can be sold to retail investors. However, where a product is not sold to retail investors, there is no necessity to draw up a key information document, and where it is impractical for the PRIP manufacturer to draw up the key information document, this may be delegated to others. The obligations under Articles 5 and 10 will only apply to the manufacturer and will apply as long as the PRIP is traded on secondary markets. In order to ensure widespread dissemination and availability of key information documents, this Regulation should provide for publication by the PRIP manufacturer of a key information document on its website.

(10) To meet the needs of retail investors, it is necessary to ensure that information on PRIPs is accurate, fair, clear and not misleading for those investors. This Regulation should therefore lay down common standards for the drafting of the key information document, in order to ensure that it is comprehensible for retail investors. Given the difficulties many retail investors have in understanding specialist financial terminology, particular attention should be paid to the vocabulary and style of writing used in the document. Rules should also be laid down on the language in which it should be drawn up. Furthermore, retail investors should be able to understand the key information document on its own without referring to other non-marketing information.

(11) Retail investors should be provided with the information necessary for them to take an informed investment decision and compare different PRIPs, but unless the information is short and concise there is a risk they will not use it. The key information document should therefore only contain key information, notably as regards the nature and features of the product, including whether it is possible to lose capital, the costs and risk profile of the product, as well as relevant performance information, and certain other specific information which may be necessary for understanding the features of individual types of products.

(12) The key information document should be drawn up in a standardised format which allows retail investors to compare different PRIPs, since consumer behaviours and capabilities are such that the format, presentation and content of information must be carefully calibrated to maximise understanding and use of information. The same order of items and headings for these items should be followed for each document. In addition, the details of the information to be included in the key information document for different PRIPs and the presentation of this information should be further harmonised through Level 2 instruments that take into account existing and on-going research on consumer behaviour, including results from testing the effectiveness of different ways of presenting information with consumers. In addition, some PRIPs give the retail investor a choice between multiple underlying investments. Those products should be taken into account when drawing up the format.

(13) *deleted*

(14) The key information document should be clearly distinguishable from any marketing communications. Its significance should not be diminished by those other documents.

(15) In order to ensure that the key information document contains reliable information, this Regulation should require PRIPs manufacturers to keep the key information document up to date. To this end, it is necessary that detailed rules relating to the conditions and frequency of the review of the information and the revision of the key information document are laid down in a Level 2 instrument to be adopted by the Commission.

(16) Key information documents are the foundation for investment decisions by retail investors. For this reason, PRIP manufacturers have an important responsibility towards retail investors in ensuring that these are not misleading, inaccurate or inconsistent with the relevant parts of the contractual documents of the PRIP. It is therefore important to ensure that retail investors have an effective right of redress. It should also be ensured that all retail investors across the Union have the same right to seek compensation for damages they may suffer due to failures on the part of PRIP manufacturers. Therefore, rules regarding the liability of the PRIP manufacturers should be harmonised. This Regulation should establish that the retail investor should be able to hold the PRIP manufacturer liable for an infringement of this Regulation in case a loss is caused through the use of the key information document that was inconsistent with pre-contractual or contractual documents, under the product manufacturers control, or is misleading or inaccurate.

(16a) This Regulation does not itself introduce a passport allowing for the sale or marketing of PRIPs cross-border to retail investors, or alter existing passport arrangements for the sale or marketing of PRIPs cross-border, if any. This Regulation does not alter the allocation of responsibilities between these existing Competent Authorities under existing passport arrangements. Competent authorities designated by Member States for the purposes of this Regulation should therefore be consistent with those appointed with competence for the marketing under an existing passport for PRIPs, if any. The competent authority of the Member State where the PRIP is marketed should be responsible for supervision of this marketing. The competent authority of the Member State where the product is marketed will always have the right to suspend the marketing of a PRIP within their territory in cases of non-conformity with this Regulation.

(17) *deleted*

(18) Regarding matters concerning the civil liability of a PRIP manufacturer and which are not covered by this Regulation, such matters should be governed by the applicable national law. The competent court to decide on a claim for civil liability brought by a retail investor should be determined by the relevant rules on International Jurisdiction.

(19) So that the retail investor is able to take an informed investment decision, persons advising on or selling PRIPs should be required to provide the key information document in good time before any transaction is concluded. This requirement should generally apply irrespective of where or how the transaction takes place. However, where the transaction is by means of distance communication, the key information document may be provided immediately after the transaction is concluded provided it is not possible to provide the key information document in advance and the retail investor consents. Persons advising on or selling include both intermediaries and the PRIP manufacturers themselves where they choose to advise on or sell the PRIP directly to retail investors. This Regulation is without prejudice to the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)[1] and to the Directive 2002/65/EC of the European Parliament and the Council of 23 September 2002 concerning the distance marketing of consumer financial services[2].

(20) Uniform rules should be laid down in order to give the person advising on or selling the PRIP a certain choice with regard to the medium in which the key information document is provided to retail investors allowing for use of electronic communications where it is appropriate having regard to the circumstances of the transaction. However, the retail investor should be given the option to receive it on paper. In the interest of consumer access to information, the key information document should always be provided free of charge.

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1 OJ …

2 OJ …

(21) To ensure the trust of retail investors in PRIPs, requirements should be established for appropriate internal procedures which ensure that retail investors receive a substantive response from the PRIP manufacturer or seller to complaints.

(22) *deleted*

(23) As the key information document should be produced for PRIPs by entities operating in the banking, insurance, securities and fund sectors of the financial markets, it is of utmost importance to ensure a smooth co-operation between the various authorities supervising PRIP manufacturers and persons advising on or selling PRIPs so that they have a common approach to the application of this Regulation.

(24) In line with the Commission Communication of December 2010 on reinforcing sanctioning regimes in the financial sector and in order to ensure that the requirements set out in this Regulation are fulfilled, it is important that Member States take necessary steps to ensure that breaches of this Regulation are subject to appropriate administrative sanctions and measures. In order to ensure that sanctions have a dissuasive effect and to strengthen investors' protection by warning them about PRIPs marketed in breach of this Regulation, sanctions and measures should normally be published, except in certain well defined circumstances.

(24a) Even though nothing prevents Member States from laying down rules for administrative sanctions as well as criminal sanctions on the same infringements, Member States should not be required to lay down rules for administrative sanctions on the infringements of this Regulation which are subject to national criminal law. In conformity with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law permits them. However, the maintenance of criminal sanctions instead of administrative sanctions for violations of this Regulation should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.

(25) *deleted*

(26) *deleted*

(27) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data governs the processing of personal data carried out in the Member States in the context of this Regulation and under the supervision of the competent authorities. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data, governs the processing of personal data carried out by the European Supervisory Authorities pursuant to this Regulation and under the supervision of the European Data Protection Supervisor. Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities should be in accordance with Directive 95/46/EC and any exchange or transmission of information by the European Supervisory Authorities should be in accordance with Regulation (EC) No 45/2001.

(28) While UCITS are investment products within the meaning of this Regulation, the recent establishment of the key investor information requirements under Directive 2009/65/EC means that it would be proportionate to provide to such UCITS a transitional period of 5 years after the entry into force of this Regulation during which time they would not be subject to this Regulation. Following this period they would become subject to this Regulation in the absence of any extension of this transitional period. This should also apply to management companies, investment companies and persons selling or advising on units of non UCITS funds when a Member State applies rules on the format and content of the key information document, as set out in Articles 78 to 81 of Directive 2009/65/EC to such funds.

(29) A review of this Regulation should be carried out four years after the entry into force of this Regulation in order to take account of market developments, such as the emergence of new types of PRIPs, as well as developments in other areas of Union law and the experiences of Member States. The review should assess whether the measures introduced have improved the average retail investors' understanding of PRIPSs and the comparability of the PRIPs. It should also consider whether the transitional period applying to UCITS or non-UCITS should be extended, or whether other options for the treatment of such funds might be considered. In addition it should assess whether the exemption of products from the scope of this Regulation should be maintained, in view of sound standards for consumer protection including comparisons between financial products. On the basis of the review, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative proposals.

(30) In order to give PRIPs manufacturers and persons advising on or selling PRIPs sufficient time to prepare for the practical application of the requirements of this Regulation, the requirements of this Regulation should not become applicable until two years after the entry into force of this Regulation.

(31) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.

(32) Since the objective of the action to be taken, namely to enhance retail investors' protection and improve their confidence in PRIPs, including where these products are sold cross-border, cannot be sufficiently achieved by the Member States acting independently of one another, and only action at the European level could address the identified weaknesses, and can therefore by reason of its effects be better achieved at Union level, the Union may adopt measures, in accordance with principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

This Regulation lays down uniform rules on the format and content of the key information document to be drawn up by packaged retail investment products (PRIPs) manufacturers and uniform rules on the provision of this document to retail investors.

Article 2

This Regulation shall apply to the manufacturers and persons advising on or selling PRIPs.

However, it shall not apply to the following products:

(a) non life insurance products as described in Directive 2009/138/EC Annex I, Classes of Non-Life Insurance;

(aa) life insurance products where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;

(ab) *deleted*

(ac) life insurance products where:

(i) the invested capital is not exposed, directly or indirectly, to market fluctuations; and

(ii) the return on the invested capital is not exposed directly or indirectly to market fluctuations affecting the underlying assets of the PRIP.

(b) deposits, other than structured deposits as defined in article 4 of Directive 2004/39/EC;

(c) securities referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC;

(d) pension products as defined in Article 4(d).

(e) *deleted*

(f) *deleted*

Article 3

1. Where investment product manufacturers subject to this Regulation are also subject to any other legal instrument requiring the provision of information to investors, then both this Regulation and the other legal instrument or instruments shall apply, save in the instance set out in paragraph 2.

2. Information contained in the key information document shall be regarded by competent authorities as satisfying those requirements laid out in Article 185 of Directive 2009/138/EC that would otherwise be duplicated.

Article 4

For the purposes of this Regulation, the following definitions shall apply:

(a) 'packaged retail investment product' or ‘PRIP’ means an investment where, regardless of the legal form of the investment, the amount repayable to the investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the investor;

(b) 'packaged retail investment product manufacturer' or ‘PRIP manufacturer’ means:

i) any entity who manufactures a PRIP;

ii) any entity who makes changes to an existing PRIP including, but not limited to, altering its risk and reward profile or the costs associated with an investment in the PRIP;

(c) 'retail investors' means:

i) retail clients as defined in point (12) of Article 4(1) of Directive 2004/39/EC;

ii) customers within the meaning of Directive 2002/92/EC, where these would not qualify as professional clients as defined in Artilce 4(1) of Directive 2004/39/EC;

(d) 'pension products' means products which under national law are recognised as having the primary purpose of providing the investor an income in retirement, and which entitles the investor to certain benefits;

(e) 'durable medium' means a durable medium as defined in Article 2(m) of Directive 2009/65/EC;

(f) 'competent authorities' means the national authorities designated by Member States to supervise the requirements this Regulation places on PRIP manufacturers and the persons advising on or selling PRIPs.

(g) *deleted*

CHAPTER II

KEY INFORMATION DOCUMENT

SECTION 1

DRAWING UP THE KEY INFORMATION DOCUMENT

Article 5

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

2. Member States may require the ex-ante notification of the key information document by the manufacturer or seller to the Competent Authority for PRIPs marketed in that Member State.

SECTION II

FORM AND CONTENT OF THE KEY INFORMATION DOCUMENT

Article 6

1. The key information document shall be accurate, fair, clear and not misleading.

2. The key information document shall be a stand-alone document, clearly separate from marketing materials. Where appropriate, the key information document may indicate that other non-marketing documentation and regulated disclosures are available and provide details of how to obtain this information.

2a. By way of derogation from paragraph 2, where an investment product offers the retail investor a range of options for investments, such that the provision of the information referred to in paragraph 2 within a single, stand-alone document is not possible, a separate key information document shall be provided for each underlying asset portfolio that is a PRIP. Cross-references between the documents shall be included where this derogation is applied.

3. The key information document shall be drawn up as a short document, not exceeding 3 pages of A4-sized paper when printed, which is:

(a) presented and laid out in a way that is easy to read, using characters of readable size;

(b) clearly expressed and written in language that communicates in a way that facilitates the retail investor's understanding of the information being communicated, in particular where:
   (i) the language used is clear, succinct and comprehensible;
   (ii) the use of jargon is avoided;
   (iii) technical terms are avoided when everyday words can be used instead. Where technical terms cannot be avoided they must be explained in the key information document;

(c) focused on the key information that investors need.

4. Where colours are used in the key information document, they shall not diminish the comprehensibility of the information in the event that the key information document is printed or photocopied in black and white.

5. Where the corporate branding or logo of the PRIP manufacturer or the group to which it belongs is used in the key information document, it shall not distract the retail investor from the information contained in the document or obscure the text.

Article 7

1. The key information document shall be written in the official language, or, at least, one of the official languages of the Member State where the PRIP is sold, or in a 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 information.

2. If a PRIP 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 8

1. The title 'Key Information Document' shall appear prominently at the top of the first page of the key information document.

2. An explanatory statement shall appear directly underneath the title. It shall read:

'This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks and rewards of this investment product and to help you to compare it against other investment products.

This precontractual document, along with other relevant precontractual and contractual documents which you should also read, does not establish whether the product is suitable for you.'.

3. The key information document shall contain the following information:

(a) under a section, at the beginning of the document, the name of the PRIP, the identity and contact details of the PRIP manufacturer, information about the competent authority of the manufacturer and the date of the document;

(b) under a section titled "What is this investment?", the nature and main features of the PRIP, including:

(i) the type of the PRIP;

(ii) its objectives and the means for achieving them, including a description of the underlying instruments or variables and how the return is determined;

(iii) *deleted*

(iv) where the PRIP offers insurance benefits, details of these insurance benefits;

(vi) a description of the various categories of retail investors to whom the PRIP is intended to be marketed.

(c) under a section titled "What could I get back and what are the risks?", a brief indication of whether loss of capital is possible, including:

(i) appropriate performance scenarios, and the assumptions made to produce them;

(ii) any guarantees or capital protection embodied in the PRIP, as well as the circumstances under which they are applicable and any limitations to these. The identity of the entity that provides those guarantees or capital protection;

(iii) *deleted*

(iiia) whether the investor bears the risk of incurring additional financial commitments or obligations, including contingent liabilities in addition to the cost of acquiring the PRIP;

(iv) a statement that the range of payout outcomes is before any tax implications and that the tax legislation of the investor's home Member State may have an impact on the actual payout;

and the risk and reward profile of the PRIP, including:

(v) a synthetic indicator, supplemented by a narrative explanation of the indicator, its main limitations and a narrative explanation of the risks which are materially relevant to the PRIP and which are not adequatedly captured by the synthetic risk indicator.

(d) under a section titled "What happens if the [name of PRIP manufacturer] is unable to pay out?", a brief description of the maximum loss for the investor and whether the loss is covered by an investor compensation or guarantee scheme;

(e) *deleted*

(f) *deleted*

(g) under a section titled "What are the costs?", the costs associated with an investment in the PRIP, comprising both direct and indirect costs to be borne by the investor, including summary indicators of these costs, and, for comparability reasons, total costs expressed in monetary examples and percentage terms, to show the effects of the total costs on the investment;

(h) *deleted*

(i) under a section titled "How long should I hold it and can I take money out early?" information about the potential consequences, including costs, of cashing the PRIP before the end of the term or recommended holding period as relevant, and the expected liquidity profile of the product including the possibility and conditions for any disinvestments, having regard to the risk and reward profile of the PRIP and the market evolution it targets;

(j) under a section titled "How can I complain?", information about how a client can levy a complaint about the product or the conduct of the manufacturer or a person advising on or selling the product.

4. The PRIP manufacturer may only include other objective information where it is necessary for the retail investor to make an informed comparison between PRIPs.

5. The information referred to in paragraph 3 shall be presented in a standardised format including the common headings and following the order set out in that paragraph. The key information document shall prominently display a common symbol to distinguish the document from other documents.

6. *deleted*

7. In order to ensure consistent application of this Article, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) shall, through the Joint Committee, develop draft regulatory technical standards specifying:

(a.i) the details of the presentation and the content of each of the elements of information referred to in paragraph 3;

(a.ii) the format for describing the underlying assets and variables, as relevant, as well as how the return is determined referred to in paragraph 3(b)(ii);

(a.iii) the presentation and details of the other objective information the product manufacturer may include within the key information document as referred to in paragraph 4;

(a.iv) the details of the standardised formats and the common symbol referred to in paragraph 5;

(a.v) the circumstances in which a separate key information document shall be provided for each asset portfolio where a single stand-alone document is not possible, as referred to in Article 6(2a);

(a.vi) *deleted*

(a.vii) the appropriate range of performance scenarios referred to in paragraph 3(c)(i);

(a) the methodology underpinning the presentation of risk and reward as referred to in point (c) (v) of paragraph 3 of this Article; and

(b) the calculation of costs as referred to in point (g) of paragraph 3 of this Article.

7a. The EBA, the EIOPA and the ESMA shall take into account the differences between PRIPs and the capabilities of retail investors as well as the features of PRIPs that allow the retail investor to select between different underlying investments or other options provided for by the product, including where this selection can be undertaken at different points in time, or changed in the future.

The draft regulatory technical standards shall take into account the different types of PRIPs.

The European Supervisory Authorities shall submit those draft regulatory technical standards to the Commission by […].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, Articles 10 to 14 of Regulation 1094/2010 and Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 9

Marketing communications that contain specific information relating to the PRIP shall not include any statement that contradicts the information contained in the key information document or diminishes the significance of the key information document. Marketing communications shall indicate that a key information document is available and supply information on how and from where to obtain it.

Article 10

1. The PRIP manufacturer shall review the information contained in the key information document regularly and revise the document where the review indicates that changes need to be made.

2. In order to ensure consistent application of this Article, the EBA, the EIOPA and the ESMA shall, through the Joint Committee, develop draft regulatory technical standards specifying:

   (a) the conditions and the frequency for reviewing the information contained in the key information document;

   (b) the conditions under which information contained in the key information document must be revised, and under which it is obligatory or optional to republish the revised key information document;

(c) the specific conditions under which information contained in the key information document must be reviewed or the key information document revised where a PRIP is made available to retail investors in a non-continuous manner;

(d) the circumstances in which retail investors are to be informed about a revised key information document for a PRIP purchased by them, as well as the means whereby the retail investors are to be informed.

The European Supervisory Authorities shall submit those draft regulatory technical standards to the Commission by […].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, Articles 10 to 14 of Regulation 1094/2010 and Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 11

1. The information in the key information document shall constitute pre-contractual information. It shall be accurate, fair, clear and not misleading. Where binding contractual documents exist, the key information document shall be consistent with those documents.

2. A PRIP manufacturer shall not incur civil liability solely on the basis of the key information document, including any translation thereof, unless it is inconsistent with pre-contractual or contractual documents under the product manufacturers control, or is misleading or inaccurate. The key information document shall contain a clear warning in this regard.

SECTION III

PROVISION OF THE KEY INFORMATION DOCUMENT

Article 12

1. A person advising on or selling a PRIP shall provide retail investors with the key information document in good time before the conclusion of a transaction relating to the PRIP.

2. *deleted*

2.a By way of derogation from paragraph 1and subject to Articles 3(1)(3)(a) and 6 of Directive 2002/65/EC, a person selling a PRIP may provide the retail investor with the key information document without undue delay; after the conclusion of the transaction where all of the following conditions are met:

(a) the retail investor chooses, on his own initiative, to contact the seller of a PRIP and conclude the transaction using a means of distance communication; and

(b) provision of the key information document in accordance with paragraph 1 is not possible; and

(c) the person selling the investment product has informed the retail investor of this fact and has given the retail investor the option of delaying the transaction in order to receive the key information document in advance; and

(d) the retail investor consents to receiving the key information document without undue delay after the conclusion of the transaction, rather than delaying the transaction in order to receive the document in advance.

3. Where successive transactions regarding the same PRIP are carried out on behalf of a retail investor in accordance with instructions given by that investor to the person selling the PRIP prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall only apply to the first transaction and to the first transaction after the key information document has been revised in accordance with Article 10.

4. In order to ensure consistent application of this Article, the EBA, the EIOPA and the ESMA shall, through the Joint Committee, develop draft regulatory technical standards specifying:

(a) the conditions for fulfilling the requirement to provide the key information document in good time as laid down in paragraph 1;

(b) the method and the time limit for the provision of the key information document in accordance with paragraph 2a.

The European Supervisory Authorities shall submit those draft regulatory technical standards to the Commission by […].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, Articles 10 to 14 of Regulation 1094/2010 and Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 13

1. The person advising on or selling a PRIP shall provide the key information document to retail investors free of charge.

2. The person advising on or selling a PRIP shall provide the key information document to the retail investor in one of the following media:

(a) on paper;

(b) using a durable medium other than paper, where the conditions laid down in paragraph 4 are met; or

(c) by means of a website where the conditions laid down in paragraph 5 are met.

3. However, where the key information document is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to retail investors upon request and free of charge. Retail investors shall be informed about their right to request a paper copy free of charge.

4. The key information document may be provided using a durable medium other than paper if the following conditions are met:

(a) the use of the durable medium is appropriate in the context of the business conducted between the person advising on or selling a PRIP and the retail investor; and

(b) the retail investor has been given the choice between information on paper and in the durable medium, and has chosen, that other medium in a way that can be evidenced.

5. The key information document may be provided by the means of a website that does not meet the definition of durable medium if all of the following conditions are met:

(a) the provision of the key information document by means of a website is appropriate in the context of the business conducted between the person advising on or selling a PRIP and the retail investor;

(b) the retail investor has been given the choice between information on paper and by means of a website and has chosen this medium in a way that can be evidenced;

(c) the retail investor has been notified electronically, or in written form, of the address of the website, and the place on the website where the key information document can be accessed;

(d) *deleted*

(e) it is ensured that the key information document remains accessible on the website, capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it.

6. *deleted*

CHAPTER III
COMPLAINTS, REDRESS, COOPERATION, SUPERVISION

Article 14

The PRIP manufacturer and seller shall establish appropriate procedures and arrangements which ensure that retail investors who have submitted a complaint in relation to the key information document receive a substantive reply in a timely and proper manner.

Article 15

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Article 16

For the purposes of the application of this Regulation the competent authorities shall cooperate with each other and, without undue delay, provide each other with such information as is relevant for the purposes of carrying out their duties under this Regulation and making use of their powers.

Competent authorities shall, in accordance with national law, have all supervisory and investigatory powers that are necessary for the exercise of their functions under this Regulation.

Article 17

1. Member States shall apply Directive 94/46/EC to the processing of personal data carried out in that Member State pursuant to this Regulation.

2. Regulation EC No 45/2001 of the European Parliament and of the Council shall apply to the processing of personal data carried out by EBA, EIOPA and ESMA.

CHAPTER IV
ADMINSTRATIVE SANCTIONS AND MEASURES

Article 18

1. Without prejudice to the supervisory powers of competent authorities and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules establishing appropriate administrative sanctions and measures applicable to situations which constitute a breach of the provisions of this Regulation and shall take all necessary measures to ensure that they are implemented. Those sanctions and measures shall be effective, proportionate and dissuasive.

   Member States may decide not to lay down rules for administrative sanctions according to paragraph 1 where those breaches are subject to criminal sanctions in their national law.

   By [*24 months after entry into force of this Regulation*] the Member States shall notify the rules referred to in the first subparagraph to the Commission and to the Joint Committee of the European Supervisory Authorities. They shall notify the Commission and the Joint Committee of the European Supervisory Authorities without delay of any subsequent amendment thereto.

2. In the exercise of their powers in Article 19, competent authorities shall cooperate closely to ensure that the administrative measures and sanctions produce the desired results of this Regulation and coordinate their action in order to avoid possible duplication and overlap when applying administrative measures and sanctions to cross border cases.

Article 18a

Competent authorities shall exercise their sanctioning powers , in accordance with this regulation and national law in any of the following ways:

- directly;
- in collaboration with other authorities;
- under the responsibility by delegation to such authorities;
- by application to the competent judicial authorities.

Article 19

1. This Article applies to the breaches of Articles 5, 6, 7, 8(1) to (5), 9, 10, 11(1), 12(1) and (2a), 13 and 14.

2. Member States shall ensure that the competent authorities have the power to impose, in accordance with national law, at least the following administrative measures and sanctions:

(a) an order prohibiting the marketing of a PRIP;

(b) an order suspending the marketing of a PRIP;

(c) a public warning which indicates the person responsible and the nature of the breach;

(d) an order prohibiting the provision of a key information document which does not comply with the requirement of Articles 6, 7, 8 and 10;

(e) an order for the publication of a new version of a key information document;

(f) administrative pecuniary sanctions of at least:

(i) in case of a legal entity:

(a) up to EUR 5 000 000 or up to 2 % of the total annual turnover according to the last available accounts approved by the management body; where the legal entity is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 83/349/EEC, the relevant total turnover shall be the total annual turnover or the corresponding type of income according to the relevant accounting Directives according to the last available consolidated account approved by the management body of the ultimate parent undertaking; or

(b) up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined;

(ii) in case of a natural person:

(a) up to EUR 500 000; or in the Member State where the Euro is not the official currency, the corresponding value to EUR 500 000 in the national currency shall be calculated taking into account the official exchange rate on [insert the date of entry into force of this Directive]; or

(b) up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined.

2a. This paragraph is without prejudice to the possibility for Member States to provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in this Regulation.

3. Member States shall ensure that, where the competent authorities have imposed one or more administrative measures and sanctions in accordance with paragraph 2, the competent authorities have the power to issue or require the PRIP manufacturer or person advising on or selling the PRIP to issue a direct communication to the retail investor concerned, giving them information about the administrative measure or sanction, and informing them where to lodge complaints or submit claims for redress.

Article 20

The competent authorities shall apply the administrative measures and sanctions referred to in Article 19(2) taking into account all relevant circumstances including, where appropriate:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the responsible natural or legal person;

(c) the impact of the breach on retail investors' interests;

(d) the cooperative behaviour of the natural or legal person responsible for the breach;

(e) any previous breaches by the responsible natural or legal person;

(f) measures taken, after the breach, by the responsible person to prevent the repetition of the breach;

(g) other relevant factors.

Article 20a

Member States shall ensure that decisions and measures taken in pursuance of this Regulation are subject to the right of appeal.

Article 21

1. Where the competent authority has disclosed administrative measures and sanctions to the public, it shall simultaneously report those administrative measures and sanctions either to EBA or EIOPA or ESMA, accordingly.

2. The competent authority shall once a year provide either EBA or EIOPA or ESMA, accordingly with aggregate information regarding all administrative measures and sanctions imposed in accordance with Articles 18 and 19(2).

3. EBA, ESMA and EIOPA shall publish this information in their annual report.

Article 21a

1. Member States shall ensure that competent authorities establish effective mechanisms to enable reporting of actual or potential breaches of the provisions of this Regulation to competent authorities.

1a. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt of reports of breaches and their follow-up;

(b) appropriate protection for employees who denounce breaches committed within their employer against retaliation, discrimination or other types of unfair treatment at a minimum;

(c) protection of the identity both of the person who reports the breaches and the natural person who is allegedly responsible for a breach, at all stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent judicial proceedings.

Further to the above, Member States may provide competent authorities under national law to establish additional mechanisms.

2. Member States may require employers engaging in activities that are regulated for financial services purposes, to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.

Article 22

1. A decision imposing an administrative sanction or measure for breach of this Regulation shall be published by competent authorities on their official website immediately after the person sanctioned is informed of that decision.

2. The publication shall include at least information on the type and nature of the breach and the identity of the persons responsible. This obligation does not apply to decisions imposing measures that are of an investigatory nature.

3. However, where the publication of the identity of the legal persons, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an on-going investigation, competent authorities shall either:

(a) delay the publication of the decision to impose a sanction or a measure until the moment where the reasons for non- publication cease to exist;

(b) publish the decision to impose a sanction or a measure on an anonymous basis in a manner which is in conformity with national law, if such anonymous publication ensures an effective protection of the personal data concerned; or

(c) not publish the decision to impose a sanction or measure at all.

In the case of a decision to publish a sanction or measure on an anonymous basis the publication of the relevant data may be postponed for a reasonable period of time if it is foreseen that within that period the reasons for anonymous publication shall cease to exist.

4. Where the decision to impose a sanction or measure is subject to an appeal before the relevant judicial or other authorities, competent authorities shall also publish immediately, on their official website, such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a sanction or a measure which has been published shall also be published.

5. Competent authorities shall ensure that any publication, in accordance with this Article, shall remain on their official website for a period of at least five years after its publication. Personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

CHAPTER IV
FINAL PROVISIONS

Article 23

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Article 24

1. Management companies and investment companies referred to under Article 2 (1) and Article 27 of Directive 2009/65/EC and persons selling units of UCITS as defined in Article 1 (2) of that Directive are exempt from the obligations under this Regulation until [OJ: please insert the date 5 years after the entry into force].

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

Article 25

1. Four years after the date of entry into force of this Regulation, the Commission shall review this Regulation. The review shall include a general survey of the practical application of the rules laid down in this Regulation, taking due account of developments in the market for retail investment products. As regards UCITS as defined in Article 1(2) of Directive 2009/65/EC, the review shall assess whether the transitional arrangements under Article 24 of this Regulation shall be prolonged, or whether, following the identification of any necessary adjustments, the provisions on key investor information in Directive 2009/65/EC might be replaced by or considered equivalent to the key investor document under this Regulation. The review shall also reflect on a possible extension of the scope of this Regulation to other financial products, and shall assess whether the exemption of products from the scope of this Regulation should be maintained, in view of sound standards for consumer protection including comparisons between financial products. The review shall also assess the appropriateness of introducing common rules on the need for all Member States to provide for administrative sanctions for breaches of this Regulation.

2. After consulting the Joint Committee of the European Supervisory Authorities, the Commission shall submit a report to the European Parliament and the Council, accompanied, if appropriate, by a legislative proposal.

Article 26

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [two years after its entry into force].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*