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from: General Secretariat
to: Permanent Representatives Committee/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council on key information documents for investment products
– Outcome of the European Parliament's first reading
(Strasbourg, 14 to 17 April 2014)

I. INTRODUCTION

On 20 November 2013, the Parliament voted in plenary to adopt one amendment to the Commission's proposal, but then postponed the vote on the legislative resolution to a later session - thereby not bringing the Parliament's first reading to a close. The proposal was instead referred back to the Committee on Economic and Monetary Affairs, pursuant to Rule 57(2) of the European Parliament's Rules of Procedure ¹.

¹ Please see doc. 16290/13.

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts then took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the Committee submitted a new compromise amendment to the proposal for a Directive. This amendment had been agreed during the informal contacts referred to above. It was intended to replace - rather than complement - the amendment already adopted in plenary on 20 November 2013.

II. VOTE

On 15 April 2014, the Parliament in plenary first voted to adopt the compromise amendment (thus replacing the amendment adopted in plenary on 20 November 2013) and then proceeded to adopt its legislative resolution (thus bringing its first reading to a close).

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto ².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position. The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ OJ C 145, 30.6.2007, p.5

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Key information documents for investment products ***I

European Parliament legislative resolution of 15 April 2014 on the proposal for a regulation of the European Parliament and of the Council on key information documents for investment products (COM(2012)0352 – C7-0179/2012 – 2012/0169(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0352),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0179/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of 11 December 2012¹,
 - having regard to the opinion of the European Economic and Social Committee of 14 November 2012²,
 - having regard to the undertaking given by the Council representative by letter of 4 April 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Civil Liberties, Justice and Home Affairs (A7-0368/2013),
1. Adopts as its position at first reading hereinafter set out³;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 70, 9.3.2013, p. 2.

² OJ C 11, 15.1.2013, p. 59.

³ This position replaces the amendment adopted on 20 November 2013 (P7_TA(2013)0489).

P7_TC1-COD(2012)0169

Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Regulation (EU) No .../2014 of the European Parliament and of the Council on key information documents for *packaged retail and insurance based* investment products (PRIIPs)*

(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,

* THIS TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

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

Having regard to the opinion of the European Central Bank¹,

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Having regard to the opinion of the European ■ Economic and Social Committee²,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 70, 9.3.2013, p. 2.

² OJ C 11, 15.1.2013, p. 59.

³ Position of the European Parliament of 15 April 2014.

Whereas:

- (1) Retail investors are increasingly offered a wide variety of different types of **packaged retail and insurance-based** investment products (**PRIIPs**) when they consider making an investment. These products **may** provide specific investment solutions tailored to the needs of retail investors, **and** are frequently **combined with insurance coverage or are** complex and difficult to understand. Existing disclosures to investors for such **PRIIPs** are uncoordinated and often fail to aid retail investors **comparing** 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 **PRIIPs** offered to retail investors is an important investor protection measure and a precondition for rebuilding confidence of retail investors in the financial market, **in particular in the aftermath of the financial crisis**. 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.

¹ **OJ L 302, 17.11.2009, p. 32.**

- (3) Different rules that vary according to the industry that offers the *PRIIPs* 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 *PRIIPs* disclosures impede the development of a level playing field between different *PRIIPs* 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.

- (4) It is necessary to establish uniform rules at the level of the Union applying across all participants of the *PRIIPs* 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 *PRIIPs* 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. It also has no effect on product intervention measures other than in relation with insurance-based investment products.***
- (5) Whilst improving *PRIIP* 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.¹ 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.²

- (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 PRIIPs 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. Therefore, should financial instruments issued by special purpose vehicles conform to the definition of a PRIIP, they would also fall within the scope of this Regulation.* 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 **PRIIPs**, 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 includes the same insurance products that fall under the definition of insurance-based investment products included in [MiFID II]. 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 **or insurance-based** 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, whereas other individual insurance accumulation or saving products that offer investment opportunities are included.***

- (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.***
- (7b) *Having regard to the ongoing work undertaken by the European Insurance and Occupational Pensions Authority on disclosure of product information requirements for personal pension products¹ and taking into account the specificities of these products, the Commission, within four years after entry into force of the Regulation, should assess whether to maintain the exclusion of pension products which, under national law, are recognized as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits. In making its assessment, the Commission shall consider whether the PRIIPS regulation is the best legislative mechanism for pensions' disclosure, or whether other disclosure mechanisms would be more appropriate.***

¹ *EIOPA, Towards an EU-single market for Personal Pensions, An EIOPA Preliminary Report to COM", EIOPA-BoS-14/029, 19.2.2014.*

(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.

(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 PRIIP manufacturers, sellers or advisors, arising from other provisions of national and Union law.

(8b) *The national competent authorities should be provided, upon request and even ex-ante, with all necessary information to verify the contents of the key information documents, to assess compliance with this Regulation and to ensure the protection of clients and investors in financial markets.*

Note: redrafted so as to be in line with proposed art. 5

(9) *PRIIPs* manufacturers – such as fund managers, insurance undertakings, █, credit institutions or investment firms – should draw up the key information document for the *PRIIPs* they manufacture, as they are in the best position to know the product, and **therefore they should be** responsible for it. The document should be drawn up by the *PRIIP* 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 *PRIIP* 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 PRIIP 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 *PRIIP* 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 **PRIIPs** 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.
- (10a) *The ESAs, when developing the technical standards for the content of the KID so as to reflect accurately the products' investment policies and objectives prescribed in this Regulation, should ensure that the manufacturer uses clear and understandable language, which should be accessible to retail investors. The description on how the investment targets are achieved, including the description of the financial instruments used, should avoid financial jargon and terminology which is not immediately clear to retail investors.*

(11) Retail investors should be provided with the information necessary for them to take an informed investment decision and compare different **PRIIPs**, 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 **■**.

(11a) *Investment product calculators are already being developed at national level. However, for those calculators to be fully useful for consumers they should cover the costs and fees charged by the various investment product manufacturers, together with any further costs or fees charged by intermediaries or other parts of the investment chain, not already included by the product manufacturers. The Commission is mandated in this Regulation to report on whether these tools are available on-line in each MS and whether they provide for reliable and accurate computations of aggregate costs and fees for all products within the scope of this Regulation.*

(12) The key information document should be drawn up in a **standardised** format which allows retail investors to compare different **PRIIPs**, 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 **PRIIPs** 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 **PRIIPs** give the retail investor a choice between multiple underlying investments, **such as internal funds held by insurance undertakings**. Those products should be taken into account when drawing up the format.

(12a) *As some of the investment products under the scope of this Regulation are not simple and may be difficult for retail investors to understand, where applicable the key information document will include a comprehension alert to inform the retail investor of this fact. A product should be regarded as not being simple and difficult to understand especially if it displays one of the following characteristics: a. it invests in underlying assets that are not commonly invested in by retail investors; b. it uses a number of different mechanisms to calculate the final return of the investment, creating a greater risk of misunderstanding on the part of the retail investor; c. the investment's pay-off takes advantage of retail investor's behavioural biases, such as a teaser rate followed by a much higher floating conditional rate, or an iterative formula".*

- (13) Increasingly retail investors *pursue, along with the* financial returns, *also additional* purposes such as social or environmental goals *of their investment*. However, information on social, environmental ■ outcomes being sought by the *PRIP* manufacturer can be difficult to compare or may be absent. Therefore, *anticipated sustainable environmental and social developments in financial investments, as well as implementation of Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds could allow for these decisive aspects to be more appropriately integrated into and further fostered by the EU law. However at this point there are no certain criteria or a formal procedure to objectively verify the target of these investments as being socially or environmentally friendly, as it stands already in the food market. Therefore, it is desirable that the review of this Regulation thoroughly considers the developments relating to social and environmental investment products and the outcomes of the review of Regulation (EU) 346/2013.*
- (14) The key information document should be clearly distinguishable *and separated* from any marketing communications. ■

- (15) In order to ensure that the key information document contains reliable information, this Regulation should require **PRIIPs** 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, **PRIIP** 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 PRIIP***. 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 **PRIIP** manufacturers **█**. Therefore, rules regarding the liability of the **PRIIP** manufacturers should be harmonised. This Regulation should establish that the retail investor should be able to hold the **PRIIP** 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 PRIIPs cross-border to retail investors, or alter existing passport arrangements for the sale or marketing of PRIIPs 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 PRIIPs, if any. The competent authority of the Member State where the PRIIP 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 PRIIP within their territory in cases of non-conformity with this Regulation.

(17a) *EIOPA's and relevant NCAs' powers should be complemented with an explicit mechanism for prohibiting or restricting the marketing, distribution and sale of insurance-based investment products giving rise to serious concerns regarding investor protection, orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system, together with appropriate coordination and contingency powers for EIOPA. This is to reflect also the powers provided to ESMA and EBA under MiFIR, so as to ensure such mechanisms for intervention can be applied for all investment products irrespective of their legal form. The exercise of such powers by competent authorities and, in exceptional cases, by EIOPA should be subject to the need to fulfil a number of specific conditions. Where those conditions are met, the competent authority or, in exceptional cases, EIOPA should be able to impose a prohibition or restriction on a precautionary basis before an insurance-based investment product has been marketed, distributed or sold to clients. These powers do not imply any requirement to introduce or apply product approval or licensing by the competent authority or by EIOPA, and do not relieve the manufacturer of an insurance-based investment product of its responsibility to comply with the all relevant requirements set out in this Regulation. Moreover, those powers of the NCAs should be used exclusively in the public interest and should not give rise to civil liability by the NCAs.*

- (18) Regarding matters concerning the civil liability of a **PRIIP** 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 PRIIPs** 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 PRIIP manufacturers themselves where they choose to advise on or sell the PRIIP 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 services².**■**

¹ **OJ ...**

² **OJ ...**

- (20) Uniform rules should be laid down in order to give the person *advising on or* selling the *PRIIP* 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.
- (21) To ensure the trust of retail investors in *PRIIPs and in financial markets as a whole*, requirements should be established for appropriate internal procedures which ensure that retail investors receive a substantive response from the *PRIIP* manufacturer to complaints.

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- (23) As the key information document should be produced for *PRIIPs* 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 *PRIIP* manufacturers *and persons advising on or selling PRIIPs* 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 sector¹ 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 *penalties* and measures. In order to ensure that *penalties* have a dissuasive effect and to strengthen investors' protection by warning them about *PRIIPs* 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 penalties as well as criminal penalties on the same infringements, Member States should not be required to lay down rules for administrative penalties 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 penalties for the same offence, but they can do so if their national law permits them. However, the maintenance of criminal penalties instead of administrative penalties 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.*

- (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 data¹ 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,¹ 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 **PRIIPs**, as well as developments in other areas of Union law and the experiences of Member States. The review should **also assess the feasibility, costs and possible benefits of introducing a label for social and environmental investments**. **Furthermore, the review should** assess whether the measures introduced have improved the average retail investors' understanding of **PRIIPs** and the comparability of the **PRIIPs**. 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**. **The Commission should also carry out a market survey to determine whether there are online calculator tools available in the market, which allow the retail investor to compute the aggregate costs and fees of PRIIPs and whether these tools are made available free-of-charge**. **On the basis of all the aforementioned reviews**, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative proposals.

- (30) In order to give *PRIIPs* manufacturers and persons *advising on or* selling *PRIIPs* 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 *PRIIPs*, 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 and insurance-based investment products*' manufacturers and uniform rules on the provision of this document to retail investors. *It aims to enable retail investors to understand and compare the key features and risks of the PRIIP.*

Article 2

1. This Regulation shall apply to the *manufacturers* and *persons advising on or selling PRIIPs*.
2. However, it shall not apply to the following products:
 - (a) *non-life insurance products as listed in Annex I of Directive 2009/138/EC (Classes of Non-life Insurance);*
 - (ab) *life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;*

- (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 which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits*;

■

- (e) *officially recognised* occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;■

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- (f) *individual* pension products for which a financial contribution from the employer is required by national law and where the *employer or the* employee has no choice as to the pension product *or* provider.

3. *The Commission shall assess, within 4 years after the entry into force of the Regulation, on the basis of the work undertaken by the European Insurance and Occupational Pensions Authority on disclosure of product information requirements, whether to propose new legislation guaranteeing appropriate disclosure of product information requirements for these products or whether to include pension products which, under national law, are recognized as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits in the scope of this Regulation.*

In making its assessment, the Commission shall ensure that such measures do not reduce standards of disclosure in member states that have pre-existing disclosure regimes for personal pensions.

Article 3

1. Where **PRIIP** manufacturers subject to this Regulation are also subject to Directive 2003/71/EC, this Regulation and Directive 2003/71/EC shall both apply.
2. Where **PRIIP** manufacturers subject to this Regulation are also subject to Directive 2009/138/EC, this Regulation and Directive 2009/138/EC shall both apply.

Article 4

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

- (a) **'packaged retail investment product' or 'PRIIP'** means an investment, **including instruments issued by SPVs as referred to in Article 14 (26) of the Directive 2009/138/EC¹ Article 4(an) of the Directive 2011/61/EU²**, 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;
- (ab) **"insurance-based investment product"** means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations;

¹ **Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).**

² **Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.**

- (ac) *“packaged retail and insurance-based investment product” or “PRIIPs” means any product that falls within the definitions of the aforementioned subparagraphs (a) and (ab);*
- (b) *‘packaged retail and insurance-based investment product manufacturer’ or ‘PRIIP manufacturer’ means:*
- (i) any *entity* who manufactures *a PRIIP*;
 - (ii) any *entity* who makes changes to an existing *PRIIP including, but not limited to, altering its risk and reward profile or the costs associated with an investment in the PRIIP*;
- (ba) *”person selling a PRIIP means a person offering or concluding the PRIIP contracts with a retail investor;*

- (c) 'retail investors' means:
- (i) retail clients as defined in *[MIFID/MIFIR II]*;
 - (ii) customers within the meaning of Directive 2002/92/EC, *where these would not qualify as professional clients as defined in Article 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 PRIIP manufacturers and the persons advising on or selling the PRIIP*;

- (g) *‘insurance Special Purpose Vehicle’ means the entity referred to in Article 14 (26) of Directive 2009/138/EC;*
- (h) *‘securitisation Special Purpose Vehicles’ means the entities referred to in Article 4(an) of Directive 2011/61/EU.*

CHAPTER II

KEY INFORMATION DOCUMENT

Section 1

Drawing up The key information document

Article 5

- 1.** *Before a PRIIP is made available to retail investors the PRIIP* 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 PRIIPs marketed in that Member State.*

Section II

Form and content of the key information document

Article 6

1. The key information document ***shall constitute pre-contractual information. It shall be accurate, fair, clear and not misleading. It shall provide key information and shall be consistent with any binding contractual documents, with the relevant parts of the offer documents and with the terms and conditions of the PRIIP.***

2. The key information document shall be a stand-alone document, clearly separate from marketing materials. ***It shall not contain cross-references to marketing material. It may contain cross-references to other documents including a prospectus where applicable, and only where the cross-reference is related to the information required to be included in the key information document by this Regulation.***

- 2a. ***By way of derogation from paragraph 2 where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each underlying investment option, cannot be provided within a single, concise stand-alone document, the KID shall provide at least a generic description of the underlying investment options and state where and how more detailed pre-contractual information documentation relating to the investment products backing the underlying investment options can be found.***

3. The key information document shall be drawn up as a short document *written in a concise manner of a maximum of three sides of A4-sized paper when printed which promotes comparability and* is:
- (a) presented and laid out in a way that is easy to read, using characters of readable size;
 - (aa) *focused on the key information that retail investors need;*
 - (b) clearly expressed and written in language *and a style* that *communicate* in a way that facilitates the understanding of the information, in particular, *in* language *that* is clear, succinct and comprehensible.
4. Where colours are used in the key information document, they shall not diminish the comprehensibility of the information *if* 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 *languages*, or *in* one of the official languages *used in the part* of the Member State where the *PRIIP* is *distributed*, or in *another* 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 key information document.

2. *If a PRIIP 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.

The key information document shall be presented in the sequence set out in the following paragraphs.

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, costs, potential gains and losses* of this ■ product and *to help you compare it with other products.*"

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

- (a) ■ at the beginning of the document, the name of the *PRIIP, the identity, and contact details of the PRIIP manufacturer, information about the competent authority of the manufacturer and the date of the document;*
- (ab) *"Where applicable, a comprehension alert: "You are about to purchase a product that is not simple and may be difficult to understand.";*

- (b) under a section titled "What *isthis product?*", the nature and main features of the **PRIIP**, including :
- (i) the type of the **PRIIP**;
 - (ii) its objectives and the means for achieving them, *in particular whether the objectives are achieved by means of direct or by means of indirect exposure to the underlying investment assets, including a description of the underlying instruments, or reference values including a specification of the markets the PRIIP invests in, including, where applicable, specific environmental or social objectives the product targets, as well as how the return is determined;*
 - (iii) *a description of the consumer type to whom the PRIIP is intended to be marketed, in particular in terms of the ability to bear investment loss and the investment horizon;*
 - (v) where the **PRIIP** offers insurance benefits, details of *those* insurance benefits, *including the circumstances that would trigger them;*
 - (vi) the term of the **PRIIP**, if known;

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- (c) *under a section titled "What are the risks and what could I get in return?", a brief description of the risk-reward profile comprising the following elements:*
- (i) *a summary risk 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 PRIIP and which are not adequately captured by the synthetic risk indicator;*
 - (ii) *the possible maximum loss of invested capital, including as applicable information on:*
 - *whether the investor can lose all invested capital; or*
 - *whether the investor bears the risk of incurring additional financial commitments or obligations, including contingent liabilities in addition to the capital invested in the PRIIP; or*
 - *where applicable, whether the PRIIP includes a capital guarantee protecting against market risk, the details on its cover and limitations, in particular with respect to the timing of when it applies.*

- (iii) appropriate performance scenarios, and the assumptions made to produce them;*
 - (iv) where applicable, information on conditions for returns to retail investors or built-in performance caps;*
 - (v) a statement that the tax legislation of the investor's home Member State may have an impact on the actual payout;*
- (d) under a section titled "What happens if [the name of the PRIIP manufacturer] is unable to pay out?", a brief description of whether the related loss is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not;*

- (e) under a section titled "What are the costs?", the costs associated with an investment in the *PRIIP*, comprising both direct and indirect costs to be borne by the investor, including *one-off and recurring costs, presented by means of* summary indicators of these costs, *and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment;*

The KID shall include a clear indication that advisors, distributors or any other person advising on or selling the PRIIP will provide information detailing any cost of distribution that is not already included in the costs specified above, so as to enable the retail investor to understand the cumulative effect that these aggregate costs have on the return of the investment.

- (f) under a section titled "How long should I hold it and can I take money out early?"**
- (i) where applicable, whether there is a cooling off period or cancellation period for the PRIIP;**
 - (ii) an indication of the recommended and where applicable required minimum holding period;**
 - (iii) the ability to make and conditions on any disinvestments before maturity, including all applicable fees and penalties, having regard to the risk and reward profile of the PRIIP and the market evolution it targets;**
 - (iv) information about the potential consequences of cashing in before the end of the term or recommended holding period, such as the loss of a capital guarantee or additional contingent fees;**

(g) under a section titled "*How can I complain?*", *information about how and to whom a client can make a complaint about the product or/and the conduct of the manufacturer or/and a person advising on or selling the product;*

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(h) *under a section titled "Other relevant information", a brief indication of any additional information documents to be provided to the investor by this manufacturer at pre- or/and at post-contractual stage, excluding any marketing material.*

4. The Commission shall be empowered to adopt delegated acts, in accordance with Article 23 of this Regulation, *specifying the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives.*

5. 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) the details of the presentation and the content of each of the elements of information referred to in paragraph 3;**
- (b) the methodology underpinning the presentation of risk and reward as referred to in point (c) (i) and (iii) of paragraph (3) of this Article; and**
- (c) the methodology for calculation of costs, including the specification of summary indicators, as referred to in point (e) of paragraph 3 of this Article.**

When developing the draft regulatory technical standards the ESAs shall take into account the various types of PRIIPs, the differences between them and the capabilities of retail investors as well as the features of the PRIIPs 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 *ESAs* 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 **PRIIP** 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, **including the manufacturer's website**.

Article 10

1. The **PRIIP** manufacturer shall review the information contained in the key information document regularly and **shall** revise the document where the review indicates that changes need to be made. **The revised version shall be made available promptly.**
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 **■** 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 **■** ;
- (c) the specific conditions under which information contained in the key information document must be reviewed or the key information document revised where an **PRIIP** 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 PRIIP** 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 PRIIP manufacturer shall not incur civil liability solely on the basis of the key information document, including any translation thereof, unless it is misleading, or inaccurate or is inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the requirements set out in Article 8.***
2. ***Where a retail investor demonstrates a loss resulting from the reliance on a key information document, under the circumstances referred to in paragraph 1, when making an investment into the PRIIP for which that key information document was produced, that retail investor may claim damages from the PRIIP manufacturer for that loss in accordance with national law.***
3. ***Elements such as "damage" or "loss" which are referred to in this Article but are not defined shall be interpreted and applied in accordance with the applicable national law as determined by the relevant rules of private international law.***

4. *This Article does not exclude further civil liability claims in accordance with national law.*
5. *The obligations under this Article shall not be limited or waived by contractual clauses.*
6. *Where the key information document concerns an insurance contract, the insurance undertakings' obligations under this Regulation are only towards the policyholder of the insurance contract and not towards the beneficiary of the insurance contract.*

Section III

Provision of the key information document

Article 12

1. A person *advising on or selling a PRIIP shall provide* retail investors ■ with the key information document in good time before *he is bound by any contract or offer relating to the PRIIP.*
2. *A person advising on or selling a PRIIP may satisfy the requirements of paragraph 1 by providing the KID to a person with written authority to make investment decisions on behalf of the retail investor in respect of transactions concluded under that authority.*

2a. By way of derogation from paragraph *1 and subject to Articles 3(1)(3)(a) and 6 of Directive 2002/65/EC*, a person selling a *PRIIP* 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 PRIIP 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 *advising on or* selling the *PRIIP* has informed the retail investor of this fact *and clearly stated that the retail investor may delay the transaction in order to receive and read the key information document before concluding the transactions*;
- (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 **PRIIP** are carried out on behalf of a retail investor in accordance with instructions given by that investor to the person selling the **PRIIP** 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** ■ **the conditions for fulfilling the requirement to provide the key information document** ■ **as laid down in paragraph 1.**

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 **PRIIP** shall provide the key information document to retail investors free of charge.
2. The person *advising on or* selling a **PRIIP** shall provide the key information document to the retail investor in one of the following media:
 - (a) *on paper, which should be the default option in case the PRIIP is offered on a face-to-face basis, unless the retail investor requests otherwise;*
 - (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 **PRIIP** 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 **PRIIP** 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) where the key information document has been revised in accordance with Article **10**, *previous* versions shall also be *provided on request of* the retail investor;
 - (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. For the purposes of paragraph 4 and 5, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the person selling an **PRIIP** and the retail investor, if there is evidence that the retail investor has regular access to the Internet. The provision by the retail investor of an e-mail address for the purposes of that business shall be regarded as such evidence.

CHAPTER IIa

Article 13a

Intervention powers of the ESAs

- 1. *In accordance with Article 9(2) of Regulation (EU) No 1094/2010, EIOPA shall monitor the market for insurance-based investment products which are marketed, distributed or sold in the Union.***
- 2. *Competent authorities shall monitor the market for insurance-based investment products which are marketed, distributed or sold in or from their Member State.***

Article 13b

EIOPA temporary intervention powers

- 1. *In accordance with Article 9(5) of Regulation (EU) No 1094/2010, EIOPA may where the conditions in paragraphs 2 and 3 are fulfilled, temporarily prohibit or restrict in the Union:***
 - (a) *the marketing, distribution or sale of certain insurance-based investment products or insurance-based investment products with certain specified features; or***

(b) a type of financial activity or practice of an insurance or reinsurance undertaking.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by EIOPA.

2. EIOPA shall take a decision under paragraph 1 only if all of the following conditions are fulfilled:

(a) the proposed action addresses a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union;

(b) regulatory requirements under Union legislation that are applicable to the relevant insurance-based investment product or activity do not address the threat;

(c) a competent authority or competent authorities have not taken action to address the threat or the actions that have been taken do not adequately address the threat.

Where the conditions set out in the first subparagraph are fulfilled, EIOPA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before an insurance-based investment product has been marketed or sold to clients.

3. *When taking action under this Article, EIOPA shall ensure that the action:*
- (a) *does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action; and*
 - (b) *does not create a risk of regulatory arbitrage.*

Where a competent authority or competent authorities have taken a measure under Article 13c, EIOPA may take any of the measures referred to in paragraph 1 without issuing the opinion provided for in Article 13d.

4. *Before deciding to take any action under this Article, EIOPA shall notify competent authorities of the action it proposes.*
5. *EIOPA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.*
6. *EIOPA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that three-month period it shall expire.*

7. *Action adopted by EIOPA under this Article shall prevail over any previous action taken by a competent authority.*
8. *The Commission shall adopt delegated acts in accordance with Article 23 specifying criteria and factors to be taken into account by EIOPA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets and to the stability of the whole or part of the financial system of the Union referred to in paragraph 2(a).*

These criteria and factors shall include:

- (a) the degree of complexity of the insurance-based investment product and the relation to the type of client to whom it is marketed and sold;*
- (b) the size or the notional value of the insurance-based investment products;*
- (c) the degree of innovation of the insurance-based investment product, an activity or a practice; and*
- (d) the leverage a product or practice provides.*

Article 13c

Product intervention by competent authorities

- 1. A competent authority may prohibit or restrict in or from that Member State:
 - (a) the marketing, distribution or sale of insurance-based investment products or insurance-based investment products with certain specified features; or*
 - (b) a type of financial activity or practice of an insurance or reinsurance undertaking.**

- 2. A competent authority may take the action referred to in paragraph 6 if it is satisfied on reasonable grounds that:
 - (a) an insurance-based investment product or activity or practice gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of financial markets or the stability of whole or part of the financial system within at least one Member State;**

- (b) existing regulatory requirements under Union law applicable to the insurance-based investment product or activity or practice do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements;*
- (c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the insurance-based investment product or activity or practice;*
- (d) the competent authority has properly consulted competent authorities in other Member States that may be significantly affected by the action; and*

- (e) *the action does not have a discriminatory effect on services or activities provided from another Member State.*

Where the conditions set out in the first subparagraph are fulfilled, the competent authority may impose the prohibition or restriction referred to in paragraph 6 on a precautionary basis before an insurance-based investment product has been marketed or sold to clients.

A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the competent authority.

3. *The competent authority shall not impose a prohibition or restriction under this Article unless, not less than one month before the measure is intended to take effect, it has notified all other competent authorities involved and the EIOPA in writing or through another medium agreed between the authorities the details of:*

- (a) *the insurance-based investment product or activity or practice to which the proposed action relates;*

- (b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and*
- (c) the evidence upon which it has based its decision and upon which is satisfied that each of the conditions in paragraph 7 are met.*

4. In exceptional cases where the competent authority deems it necessary to take urgent action under this Article in order to prevent detriment arising from the insurance-based investment products, practices or activities mentioned in paragraph 6, the competent authority may take action on a provisional basis with no less than 24 hours written notice, before the measure is intended to take effect, to all other competent authorities and EIOPA, provided that all the criteria in this Article are met and that, in addition, it is clearly established that a one month notification period would not adequately address the specific concern or threat. The competent authority may not take action on a provisional basis for a period exceeding three months.

5. *The competent authority shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 6. The notice shall specify details of the prohibition or restriction, a time after the publication of the notice from which the measures will take effect and the evidence upon which it is satisfied each of the conditions in paragraph 7 are met. The prohibition or restriction shall only apply in relation to actions taken after the publication of the notice.*
6. *The competent authority shall revoke a prohibition or restriction if the conditions in paragraph 7 no longer apply.*
7. *The Commission shall adopt delegated acts in accordance with Article 23 specifying criteria and factors to be taken into account by competent authorities in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system within at least one Member State referred to in paragraph 7(a).*

These criteria and factors shall include:

- (a) the degree of complexity of an insurance-based investment product and the relation to the type of client to whom it is marketed and sold;*
- (b) the degree of innovation of an insurance-based investment product, an activity or a practice;*
- (c) the leverage a product or practice provides;*
- (d) in relation to the orderly functioning and integrity of financial markets, the size or the notional value of an insurance-based investment product.*

Article 13d
Coordination by EIOPA

- 1. EIOPA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 13c. In particular EIOPA shall ensure that action taken by a competent authority is justified and proportionate and that where appropriate a consistent approach is taken by competent authorities.*
- 2. After receiving notification under Article 13c of any action that is to be imposed under that Article, EIOPA shall adopt an opinion on whether the prohibition or restriction is justified and proportionate. If EIOPA considers that the taking of a measure by other competent authorities is necessary to address the risk, it shall also state this in its opinion. The opinion shall be published on EIOPA's website.*
- 3. Where a competent authority proposes to take, or takes, action contrary to an opinion adopted by EIOPA under paragraph 2 or declines to take action contrary to such an opinion, it shall immediately publish on its website a notice fully explaining its reasons for so doing.*

CHAPTER III
COMPLAINTS, REDRESS, COOPERATION

Article 14

The **PRIIP** manufacturer *and the person advising on or selling the PRIIP* shall establish appropriate procedures and arrangements which ensure that:

- (a) *retail investors have an effective way of submitting a complaint against the PRIIP manufacturer;*
- (b) retail investors who have submitted a complaint in relation to the key information document receive a substantive reply in a timely and proper manner; *and*
- (c) *effective redress procedures are also available to retail investors in the event of cross-border disputes, in particular where the PRIIP manufacturer is located in another Member State or in a third country.*

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 95/46/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
ADMINISTRATIVE *PENALTIES* AND *OTHER* 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(1), 6, 7, 8(1) to (4), 9, 10(1), 12(1), 12(2a), 12(3), 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 *administrative actions*:

- (a) an order prohibiting the marketing of *a PRIIP*;
- (b) an order suspending the marketing of *a PRIIP*;
- (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 and requiring 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 3 % 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 700 000; or in the Member State where the Euro is not the official currency, the corresponding value to EUR 700 000 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 *penalties and other* measures ■ in accordance with paragraph 2, the competent authorities have the power to issue or require *PRIIP* manufacturer or person *advising on or* selling the *PRIIP* to issue a direct communication to the retail investor concerned, giving them information about the administrative measure or *administrative* sanction, and informing them where to lodge complaints or submit claims for redress.

Article 20

The competent authorities shall apply the administrative measures and *administrative* 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;*

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 **administrative** sanctions to the public, it shall simultaneously report those administrative measures and **administrative** sanctions to **the competent ESA, accordingly**.
2. The **competent authority** shall once a year provide **the competent ESA, accordingly** with aggregate information regarding all administrative measures and **administrative** sanctions imposed in accordance with Articles 18 and 19(2).
3. **The ESAs** shall publish this information in **their** annual **reports**.

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, against which there is no appeal, imposing an administrative sanction or measure for █ breaches referred to in Article 19(1) shall be **published by competent authorities on their official website** without undue delay **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 event that the options set out in (a) and (b) above are considered insufficient to ensure:

(i) that the stability of financial markets would not be put in jeopardy;

(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

Competent authorities shall inform ESAs accordingly of all administrative sanctions imposed but not published in accordance with paragraph 3(c) including any appeal in relation thereto and the outcome thereof.

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 national law foresees that the decision to impose a sanction or measure, which is subject to an appeal before the relevant judicial or other authorities shall also be published, the competent authorities will publish on their official website, without undue delay, 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

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in *Article 8(4)*, *Article 13b(8)* and *Article 13c(7)* shall be conferred on the Commission for a period of *three* years ■ from the entry into force of this Regulation. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. ■ As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

4. **█** A delegated act adopted pursuant to *Article 8(5), Article 10(2), Article 12(4), Article 13a(10)* and *Article 13b(9)* shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **3** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by *three* months **█** at the initiative of the European Parliament or the Council.

5. *Without prejudice to the other provisions of Regulations (EU) No 1093/2010, 1094/2010 and 1095/2010, the period for objection by the European Parliament and the Council in case of endorsement of the draft regulatory technical standard without changes by the Commission shall be two months [because of the complexity and volume of the issues covered]. That period may be extended once on initiative of the European Parliament or the Council for a further one month.*

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 *five* 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 24a

Four years after entry into force of this Regulation, the Commission shall conduct a market survey to determine whether there are online calculator tools available which allow the retail investor to compute the aggregate costs and fees of PRIIPs and whether these tools are made available free-of-charge. The Commission shall report on whether these tools provide for reliable and accurate calculations for all products within the scope of this Regulation.

In the event that the survey concludes that no such tools exist or that existing tools do not enable retail investors to understand the aggregate amount of costs and fees of PRIIPS, the Commission shall assess the feasibility of EBA, ESMA and EIOPA, through the Joint Committee, developing draft regulatory technical standards setting out the specifications applicable to such European level tools.

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, ***on the basis of the information received by ESAs***, a general survey of the ***operation of the comprehension alert, taking into account any guidance developed by competent authorities in this respect. It shall also include a 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, ***the feasibility, costs and possible benefits of introducing a label for social and environmental investments. As part of this review the Commission shall undertake consumer testing and an examination of non-legislative options as well as the outcomes of the review of Regulation (EU) 346/2013 regarding Articles 27(1)(c), (e) and (g) thereof.***

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 *ESAs*, the Commission shall submit a report to the European Parliament and *to* 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 ... * [*OJ please insert date*: two years after ***the date of*** entry into force ***of this Regulation***].

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

Done at

For the European Parliament
The President

For the Council
The President