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From: General Secretariat of the Council

To: Delegations

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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS and

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS)

– Letter to the Chairperson of the European Parliament Committee on Economic and Monetary Affairs

Following the Permanent Representatives Committee meeting of 5 November 2021 which endorsed the final compromise texts with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annexes, to the Chair of the European Parliament Committee on Economic and Monetary Affairs.

Encl.:



Ms Irene TINAGLI
Chair of the Committee on Economic and Monetary Affairs
European Parliament
Rue Wiertz 60
B-1047 Brussels

Brussels, 05. 11. 2021

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS - 2021/0215 (COD) and

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS) - 2021/0219 (COD)

Madam,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on these files at first reading.

Yours faithfully,

I. JARC

Chairman of the Permanent
Representatives Committee (Part 2)

copy to: Ms. Mairead McGuinness, Commissioner
Mr. Jonás Fernández, European Parliament Rapporteur

PE-CONS No/YY – 2021/0215 (COD)

REGULATION (EU) 2021/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**amending Regulation (EU) No 1286/2014 as regards the extension
of the transitional arrangement for management companies, investment companies
and persons advising on, or selling, units of undertakings
for collective investment in transferable securities (UCITS) and non-UCITS**

(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 Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C [...], [...], p. [...].

Whereas:

- (1) Article 5 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council² requires manufacturers of packaged retail and insurance-based investment products (PRIIPs) to draw up a key information document ('KID').
- (2) Article 32(1) of that Regulation, however, contains an exemption to produce a KID for management companies as defined in Article 2(1), point (b), of Directive 2009/65/EC of the European Parliament and of the Council³, investment companies as referred to in Article 27 of that Directive and persons advising on, or selling, units of UCITS as referred to in Article 1(2) of that Directive until 31 December 2021 ('transitional arrangement'). Article 32(2) of Regulation (EU) No 1286/2014 stipulates that where a Member State applies rules on the format and content of the key investor information, as laid down in Articles 78 to 81 of Directive 2009/65/EC, to non-UCITS funds offered to retail investors, the transitional arrangement is to apply to management companies, investment companies and persons advising on, or selling, units of such non-UCITS funds to retail investors.
- (3) Commission Delegated Regulation (EU) 2017/653⁴ supplements Regulation (EU) No 1286/2014 by laying down regulatory technical standards with regard to the presentation, content and standard format of the KID, the methodology for the presentation of risk and reward and the calculation of costs, as well as the conditions and minimum frequency for reviewing the information contained in the KID and the conditions on providing the KID to retail investors.

² Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

³ 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) (OJ L 302, 17.11.2009, p. 32).

⁴ Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents (OJ L 100, 12.4.2017, p. 1).

- (4) On ... [OJ Please insert the date], the Commission adopted Commission Delegated Regulation (EU) 2021/...⁵, amending Delegated Regulation (EU) 2017/653, inter alia, to make it easier for management companies, investment companies, and persons advising on, or selling, units of UCITS and non-UCITS to make use of the presentation, content and standard format of the KID. The date of application of Delegated Regulation (EU) 2021/... should reflect the need to give those management companies, investment companies, and persons advising on, or selling, units of UCITS and non-UCITS sufficient time to prepare for the end of the transitional arrangement and thus for the obligation to draw up a KID.
- (5) In order to ensure that this need for sufficient time to prepare for the obligation to produce a KID is met, it is necessary to extend the duration of the transitional arrangement by twelve months, that is until 31 December 2022.
- (6) Regulation (EU) No 1286/2014 should therefore be amended accordingly.
- (7) Regulation (EU) No 1286/2014 aims to enable retail investors to make better-informed investment decisions. In spite of its good intentions a number of criticism have been made since its adoption that urge to be addressed in order to improve retail investors' trust into financial markets, for the benefit of companies looking for funding and for the investors' long-term benefit. Existing limitations include, among others, the need for a clearer definition of retail investors, the product scope of the PRIIPs Regulation, the elimination of paper by default where a PRIIP is offered on a face-to-face basis, the concept of successive transactions, the provision of pre-contractual information to professional investors. The need for a broader review was already set out in Regulation (EU) No 1286/2014 and its urgency remains unchanged. On the basis of such a review in accordance with Regulation (EU) No 1286/2014, the Commission is expected to submit as a matter of urgency a report to the European Parliament and to the Council accompanied, where appropriate, by a proposal to address the existing limitations.

⁵ OJ C [...], [...], p. [...].

- (8) Given the very short period left until the original end of the transitional arrangement, this Regulation should enter into force without delay,

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 32(1) of Regulation (EU) No 1286/2014, the date '31 December 2021' is replaced by 31 December 2022'.

Article 2

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

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President

DIRECTIVE (EU) 2021/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**amending Directive 2009/65/EC as regards the use of key information documents by
management companies of undertakings for collective investment in transferable securities
(UCITS)**

(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 53(1) 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 Economic and Social Committee⁶,

Acting in accordance with the ordinary legislative procedure,

⁶ OJ C [...], [...], p. [...].

Whereas:

- (1) Article 78 of Directive 2009/65/EC of the European Parliament and of the Council⁷ requires investment companies and management companies to draw up a short document containing key information about the essential characteristics of undertakings for collective investment in transferable securities (UCITS) offered to investors ('key investor information document' or 'KIID'), so that those investors are reasonably able to understand the nature and the risks of the UCITS concerned and, consequently, to take investment decisions on an informed basis.
- (2) Regulation (EU) No 1286/2014 of the European Parliament and of the Council⁸ requires manufacturers of packaged retail and insurance-based investment products (PRIIPs), before making such products available to retail investors, to draw up a key information document for that product in order to enable such retail investors to understand and compare the key features and risks of the PRIIP concerned ('key information document' or 'KID').
- (3) UCITS also qualify as PRIIPs, for which a 'KID' is required pursuant to Regulation (EU) No 1286/2014. Article 32(1) of that Regulation, however, exempts management companies as defined in Article 2(1)(b) of Directive 2009/65/EC, investment companies as referred to in Article 27 thereof and persons advising on, or selling, units of UCITS from the obligations laid down in that Regulation, and thus from producing a 'KID', until 31 December 2021 ('transitional arrangement').

⁷ 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) (OJ L 302, 17.11.2009, p. 32).

⁸ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

- (4) Commission Delegated Regulation (EU) 2017/653⁹ supplements Regulation (EU) No 1286/2014 by laying down regulatory technical standards with regard to the presentation, content and standard format of the KID, the methodology for the presentation of risk and reward and the calculation of costs, as well as the conditions and minimum frequency for reviewing the information contained in the KID and the conditions on providing the KID to retail investors.
- (5) On [OJ Please insert the date], the Commission adopted Commission Delegated Regulation (EU) 2021/...¹⁰, amending Delegated Regulation (EU) 2017/653, inter alia, to make it easier for management companies, investment companies, and persons advising on, or selling, units of UCITS to make use of the presentation, content and standard format of the KID. The date of application of Delegated Regulation (EU) 2021/... should reflect the need to give those management companies, investment companies, and persons advising on, or selling, units of UCITS, sufficient time to prepare for the end of the transitional arrangement and thus for the obligation to produce a KID.
- (6) In order to ensure that this need for sufficient time to prepare for the obligation to produce a KID is met, Regulation (EU) No 1286/2014 has been amended by Regulation (EU) 2021/... of the European Parliament of the Council¹¹ to extend the transitional arrangement until 31 December 2022.

⁹ Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents (OJ L 100, 12.4.2017, p. 1).

¹⁰ OJ C [...], [...], p. [...].

¹¹ Regulation (EU) 2021/... of the European Parliament of the Council as regard the extension of the transitional arrangement for management companies, investment companies and persons on advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS (OJ L ..., ..., p. ...).

- (7) The ‘key investor information’ required by Article 78 of Directive 2009/65/EC and the ‘key information documents’ required by Regulation (EU) No 1286/2014 cover essentially the same information requirements. It is therefore necessary to avoid that retail investors in PRIIPs interested in acquiring units of UCITS would receive, as of 1 January 2023, both documents for the same financial product. It should therefore be laid down that the KID is to be considered as satisfying the requirements applicable to the key investor information document required by Directive 2009/65/EC. This also means that for investors other than retail investors, investment companies and management companies should continue to draw up a ‘key investor information’ in accordance with Directive 2009/65/EC, unless they decide to draw up a ‘key information document’ as set out in Regulation (EU) No 1286/2014, in which case they should not be required by competent authorities to provide the ‘key investor information’, and only the ‘Key information document’ should then be provided to those investors.
- (8) Directive 2009/65/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In Directive 2009/65/EC, the following Article 82a is inserted:

“Article 82a

Key investor information provided through key information document

1. Member States shall ensure that where an investment company or, for any of the common funds it manages, a management company draws up, provides, revises and translates a key information document which complies with the requirements for key information documents laid down in Regulation (EU) No 1286/2014 of the European Parliament and of the Council*, competent authorities consider that key information document as satisfying the requirements applicable to key investor information as set out in Articles 78 to 82 and Article 94 of this Directive.
2. Member States shall ensure that competent authorities do not require an investment company or, for any of the common funds it manages, a management company to draw up key investor information as set out in Articles 78 to 82 and Article 94 of this Directive where it draws up, provides, revises and translates a key information document which complies with the requirements for key information documents set out in Regulation (EU) No 1286/2014.

* Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).”.

Article 2

1. By 30 June 2022, Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 1 January 2023.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
