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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	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) - Outcome of the European Parliament's first reading (Strasbourg, 22-25 November 2021)

I. INTRODUCTION

A number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Committee on Economic and Monetary Affairs presented compromise amendments (amendments 1 to 6) to the abovementioned proposal for a Directive. These amendments had been agreed during informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 23 November 2021, the plenary adopted in a single vote the compromise amendments (amendments 1 to 6) to the abovementioned proposal for a Directive. No other amendments were adopted. 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 hereto¹.

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 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.

European Parliament legislative resolution of 23 November 2021 on the 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) (COM(2021)0399 – C9-0327/2021 – 2021/0219(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0399),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0327/2021),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 20 October 2021²,
 - having regard to the undertaking given by the Council representative by letter of 5 November 2021 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 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0301/2021),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

² Not yet published in the Official Journal.

P9_TC1-COD(2021)0219

Position of the European Parliament adopted at first reading on 23 November 2021 with a view to the adoption of Directive (EU) 2021/... 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)

(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 Committee³,

Acting in accordance with the ordinary legislative procedure⁴,

³ Opinion of 20 October 2021 (not yet published in the Official Journal).

⁴ Position of the European Parliament of 23 November 2021.

Whereas:

- (1) Article 78 of Directive 2009/65/EC of the European Parliament and of the Council⁵ 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'), so that those investors are reasonably able to understand the nature and the risks of the UCITS that is being offered to them and, consequently, to take investment decisions on an informed basis.
- (2) Regulation (EU) No 1286/2014 of the European Parliament and of the Council⁶ requires manufacturers of packaged retail and insurance-based investment products (PRIIPs), before making a PRIIP available to retail investors, to draw up and publish a key information document ('KID') for that product in order to enable such retail investors to understand and compare the key features and risks of the PRIIP.

⁵ 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).

⁶ 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) 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), point (b), of Directive 2009/65/EC, 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 from the obligations laid down in that Regulation, and thus from the requirement to produce a KID, until 31 December 2021 ('the transitional arrangement').
- (4) Commission Delegated Regulation (EU) 2017/653⁷ 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 for the calculation of costs, the conditions and minimum frequency for reviewing the information contained in the KID, and the conditions for providing the KID to retail investors.

⁷ 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).

- (5) On 7 September 2021, the Commission adopted Delegated Regulation (EU) 2021/...amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) 2017/653 as regards the underpinning methodology and presentation of performance scenarios, the presentation of costs and the methodology for the calculation of summary cost indicators, the presentation and content of information on past performance and the presentation of costs by PRIIPs offering a range of options for investment and alignment of the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council as underlying investment options with the prolonged transitional arrangement laid down in that Article. The date of application of that Delegated Regulation is 1 July 2022, but it is important to **reflect the need** to give 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 produce a KID. ■
- (6) ***In order*** to ensure that ***the 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 Council⁸⁺ to extend the transitional arrangement until ***31 December*** 2022.

⁸ Regulation (EU) 2021/... of the European Parliament of the Council of ... amending Regulation (EU) No 1286/2014 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. ...).

⁺ OJ: Please insert in the text the number of the Regulation contained in document PE 71/21 [2021/0215 (COD)] and insert number, date and OJ reference of that Regulation in the footnote.

- (7) The key investor information and the KID cover essentially the same information requirements. It is therefore necessary to ensure that retail investors in PRIIPs interested in acquiring units of UCITS do not receive, from 1 **January 2023**, both documents for the same financial product. It should therefore be laid down that the KID is to be considered to satisfy the requirements applicable to the key investor information . ***In addition, for investors other than retail investors, investment companies and management companies should continue to draw up key investor information in accordance with Directive 2009/65/EC, unless they decide to draw up a KID as set out in Regulation (EU) No 1286/2014. In such cases, investment companies and management companies should not be required by competent authorities to provide the key investor information, and only the KID should 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 is inserted:

“Article 82a

- 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 to satisfy the requirements applicable to key investor information 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 in accordance with 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 shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by 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 ...,

For the European Parliament

For the Council

The President

The President
