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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, 18 to 21 November 2013)

I. INTRODUCTION

The Rapporteur, Mrs Pervenche BERÈS (S&D - FR), presented a report consisting of one amendment (amendment 1) to the proposal for a Regulation on behalf of the Committee on Economic and Monetary Affairs.

In addition, the EPP and ECR political groups each tabled one amendment (amendments 2 and 3 respectively).

II. DEBATE

The Rapporteur opened the debate, which took place on 19 November 2013, and:

- stated that the purpose of the Key Information Documents ("KIDs") is to help retail investors make informed choices, rather than to help the vendors of financial products;
- argued that the scope of the Regulation should be extended to include shares, interest-rate linked savings products (including sovereign and corporate debt bonds), bank term deposits and life insurance;
- emphasised the fact that the Commission's proposal, if not amended, would entail a risk that KIDs would favour the sale of complex financial products to small investors, even though there is reason to doubt the efficacy of these products' contribution to the funding of the real economy;
- recalled that, in order to secure a large majority in the Parliament, she had proposed at the time of the committee vote a compromise that would exclude from the scope of the Regulation both shares and sovereign bonds, but would retain within the scope both corporate bonds and financial instruments issued by securitisation institutions. The committee had rejected the amendment submitted by some members of the EPP political group to exclude life insurance contracts from the scope;
- stated that the Parliament's negotiating team had drafted a useful amendment to the Commission's proposal, requiring indicative future performance scenarios to be based on multi-factor analysis rather than rely solely on a risk indicator based on past performance data;
- noted the disagreement within the Parliament regarding information to be supplied on the environmental, societal and governance-related impact of investment products. She stated that retail investors should take such factors into account when taking investment decisions;
- referred to the sensitivity of some political groups regarding three factors which she herself regarded as crucial to the achievement of the Regulation's objectives:
 - effective information and protection of consumers in the context of investment decisions. It should be possible for national and European supervisory authorities to see their prerogatives harmonised so that they can suspend or prohibit the marketing of investment products which turn out be dangerous;

- there should be a complexity label for highly complex investment products; and
 - it is important to check that the characteristics of investment products are compatible with the purposes of the targeted investors.
- stressed the need for the information supplied by the initiator of investment products as regards investment-linked costs to be supplemented with corresponding information from the distributor of the product. Costs can vary between different distributors; and
 - called for a large majority for the negotiating mandate with a view to complete the legislative process during the current parliamentary term.

Commissioner BARNIER:

- stated that the financial crisis had demonstrated the vulnerability of individual investors, who were directly exposed to the difficulties of large financial institutions;
- noted that individual investors are on an unequal footing with organisations that sell investment products. There is a sort of asymmetry in terms of information and understanding. This creates a situation that is conducive to a lot of abuse. Innumerable investors throughout Europe have purchased products in the belief that they were safe, only to find themselves burdened with losses far in excess of what they could have imagined. Small consumers have therefore come to mistrust the providers of financial products. Savers no longer invest their funds with confidence or effectively. Savings have concentrated in bank accounts (in many Member States, bank deposits make up as much as 40% or even 50% of total financial investments). Given the currently low level of interest rates, European savers are only just protected against inflation. Nor is there any benefit for the European economy;
- stated that the financial crisis has revealed the dubious market practices which the various rules currently in force have not been able to prevent. Many different texts govern the sale of financial products to retail investors. Similar products are regulated differently, particularly as regards investor information requirements;

- noted, with regard to the differences of opinion within the Parliament on the scope of the Regulation, that the Commission wants to submit all 'packaged' products to the same rules. This would include all products with market-linked risk, about which consumers must be precisely informed (i.e. not only investment funds, all structured products and all individual pension products, but also all profit-participation investment products);
- recalled that the Council had reached agreement on a common position in June 2013; and
- stressed the need for trilogues to commence as soon as possible after the following day's plenary vote with a view to concluding the legislative process in the coming months.

Speaking on behalf of the Committee on the Internal Market and Consumer Protection, Mr Pier Antonio PANZERI (S&D - IT):

- stressed investors' need for clear and understandable information so that they can compare products and see how their money is protected; and
- called for penalties for non-compliance.

Speaking on behalf of the EPP political group, Mrs Sirpa PIETIKÄINEN (EPP - FI):

- noted the increasing level of investment in structured products;
- stressed retail investors' difficulty in comparing products and assessing their suitability;
- called for a level playing field; and
- argued that risk is not bad in itself - provided that consumers understand that higher returns are often linked to higher levels of risk.

Speaking on behalf of the S&D political group, Mr Josef WEIDENHOLZER (S&D - AT):

- stressed the need for action against deliberately misleading advertising of investment products; and
- called for a rapid agreement between the institutions so that the legislative process can be concluded before the Parliament's 2014 elections.

Speaking on behalf of the ALDE political group, Mrs Sharon BOWLES (ALDE - UK):

- expressed her support for a wide scope that would include life insurance products, which can be similar to other investment products and thus merit side-by-side comparison;
- stressed the need for fee transparency. Retail investors must know what they will pay, what they are paying for, and the impact that this will have on their investment. Hidden costs should not be permitted;
- welcomed the committee's acceptance of the ALDE political group's proposal for an on-line fund calculator to be developed by the European Supervisory Authorities. This would allow investors to compare the information provided to them by fund managers;
- advocated the ALDE political group's proposal for a complexity label. Complex products should not be banned outright, because they can be useful for the right investor. The complexity label would create EU-wide criteria for the disclosure of complexity by product manufacturers in a retail context. It would answer a simple question, namely whether a product contains one of six complex elements. It does not replace the MiFID test for investment firms on suitability for professional or retail investors. That test serves a different test at a different level; and
- called for a strong and meaningful regulation, on which the institutions should reach agreement during the current parliamentary term.

Mr Werner LANGEN (EPP - DE):

- noted that all political groups agree that the objective of the Regulation should be to provide more information to retail investors. There is no controversy about this;
- stated that the Rapporteur is, however, seeking to go beyond this common objective. Her calls for approval mechanisms and the inclusion of company pensions go beyond the limit of what is useful and what the Commission proposed. This is why it was necessary to seek a mandate from the plenary, rather than from 'shadow meetings' of the Committee on Economic and Monetary Affairs;
- argued that only those insurance products for which consumers bear the risk should be included within the scope of the Regulation. These sorts of insurance products are very limited in number. Normal insurance products should not fall within the scope of the Regulation;

- stated that proposed measures regarding liability, sanctions and the carbon footprint would not help the consumer and should not fall within the scope of the Regulation; and
- argued that too much information will simply confuse consumers.

Mr Othmar KARAS (EPP - AT):

- stressed the need for consistency with UCITS V and MiFID II; and
- noted the calls by previous speakers for investors to be provided with information to allow them to make informed decisions. That is why it is important not to overload information documents with a large mass of unmanageable information. There is a risk that investors will not be able to see the wood for the trees. Information creates consumer trust. Bureaucracy does not.

Commissioner BARNIER once more took the floor and:

- called for the most balanced compromise possible. Mr Karas had made this point; and
- called for a compromise agreement before the end of the current parliamentary term. There will be differences between the Council's position and that which the Parliament will adopt, but none of these differences will be insurmountable. The Regulation's scope will be decided through discussion and compromise.

The Rapporteur once more took the floor and:

- noted Mr Langen's argument that small investors should not be drowned in a mass of information. She nevertheless argued that, in a changing world in which markets sometimes evolve in an erratic manner, information should not be a mere formality. It is also possible for such information to be truly kept up to date. It is vital for investors to know who is providing advice on a particular investment strategy and what is the investment project; and
- called for support for the reinforcement of the agencies' powers, for the development of complexity labels, and for the coordination of the work of national and European supervisory authorities.

Mr LANGEN asked the Rapporteur whether she really believed that return-seeking small investors (for example, those who had invested their money with Iceland's Kaupthing Bank for a return of 14%, but without weighing up the risk) would have been restrained by a voluminous product information brochure. He questioned whether there is therefore any justification for such exaggerated bureaucracy.

The Rapporteur replied to Mr Langen that she had not properly understood his question, but that she had understood that his main concern is to remove information from the scope. Her objective was certainly not to increase bureaucracy, but the financial crisis had shown the need for investors to be better informed about the investment products proposed to them by their financial advisors. She hoped that this aim could be achieved during the current parliamentary term, even with Mr Langen's support.

III. VOTE

When it voted on 20 November 2013, the Parliament adopted one amendment (amendment 1). The text of this amendment is annexed to the present note.

The vote on the legislative resolution was postponed to a later session, thereby not closing the first reading. The matter 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.

Key information documents for investment products ***I

Amendments adopted by the European Parliament on 20 November 2013 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))¹

(Ordinary legislative procedure: first reading)

[Amendment No 1]

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on key information documents for investment products

(Text with EEA relevance)

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank²,

Having regard to the opinion of the European Economic and Social Committee¹,

¹ This matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0368/2013).

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■ .

² OJ C 70, 9.3.2013, p. 2.

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Retail investors are increasingly offered a wide variety of different types of investment products when they consider making an investment. These products *may* provide specific investment solutions tailored to the needs of retail investors, but are frequently complex and difficult to understand. Existing disclosures to investors for such investment products are uncoordinated and often fail to aid retail investors compare between the different products, *to understand* their features, *or to improve such investors' financial education*. 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 investment products 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).
- (3) Different rules that vary according to the industry that offers the investment products 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 investment product disclosures impede the development of a level playing field between different investment product manufacturers and those selling these products and thus distort competition. It would also create an uneven level of investor protection with the Union. Such divergences represent an obstacle to the establishment and smooth functioning of the Single Market.

¹ OJ C 11, 15.1.2013, p. 59.

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 investment product market on transparency so as to prevent divergences **and reduce costs and uncertainty for product providers and distributors**. 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 participants in the investment product market are subject to the same requirements. This should also ensure uniform disclosures by preventing divergent national requirements as a result of the transposition of a Directive. The use of a Regulation is also appropriate to ensure that all those selling investment products are subject to uniform requirements in relation to the provision of the key information document to retail investors.
- (5) Whilst improving investment product 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 **(including investment advice, investor protection measures and other sales services)** in Directive 2004/39/EC of the European Parliament and the Council¹. 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 Council².
- (6) This Regulation should apply to all products **and underlying investments** regardless of their form or construction that are manufactured by the financial services industry to provide investment opportunities to retail investors, where the return offered to the investor is exposed to the performance of one or more assets or reference values **■**. This should include investment products such as investment funds **and** life insurance policies **and the investments underlying those investment funds and life insurance policies**, and retail

¹ Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC(OJ L 145, 30.4.2004. p. 1).

² Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3).

█ products *including* assets *that are held directly, such as sovereign bonds or shares that are offered to the public or admitted to trading on a regulated market situated or operating within a Member State. Retail packaged structured* 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 *and to ensure that retail investors are able to understand the key features and risks of retail investment products.*

- (6a) *This Regulation should also apply to shares or units of special purpose vehicles and holding companies which an investment product manufacturer may devise with a view to circumventing this Regulation.*
- (6b) *Packaged investment products should provide clear benefits for retail investors, such as spreading investment risks to many different economic sectors or many underlying assets. However, packaging techniques can also be used to create features of investment products, which aim at misleading consumers, when they make their investment decision. Certain products with “teaser rates” play on behavioural biases of retail investors, in this case on their preference for immediate attractive returns. The use of product names implying greater safety than is possible plays on the behavioural biases of consumers in a comparable way, addressing their aversion to risk. Consequently, such packaging techniques create a risk that the investor will focus strongly on immediate financial benefits without fully realising the related future risks. This Regulation should aim at avoiding packaging features which exploit biases in the decision making of investors, in order to promote transparency and a better understanding of risks linked to packaged retail investment products.*
- (7) Insurance products that do not offer investment opportunities █ should █ be excluded from the scope of the Regulation. █ Since the focus of this Regulation is on improving the comparability and comprehensibility of information about investment products being marketed to retail investors, █ occupational pension products *and individual pension products* should be excluded from the scope of this Regulation, provided that a financial

contribution from the employer is required by national law and provided that ***the employer or*** the employee has no choice as to the pension product provider. Investment funds dedicated to institutional investors are not within the scope of this Regulation either since they are not for sale to retail investors. However, investment products with the purpose of accumulating savings for individual pensions should remain in scope because they often compete with the other products under this Regulation and are distributed in a similar way to the retail investor.

- (8) In order to provide clarity on the relationship between the obligations established by this Regulation and obligations established by Directive 2003/71/EC of the European Parliament and the Council¹ and by Directive 2009/138/EC of the European Parliament and of the Council², it is necessary to establish that those Directives ***are complementary*** to this Regulation. ***In particular, the key information document should incorporate the summary that provides key information as referred to in Article 5(2) in Directive 2003/71/EC following a review of this Regulation.***
- (8a) ***Investment product manufacturers should ensure that the investment product they structure is compatible with the profile of the targeted retail investors. They should therefore set up a prior product approval process to ensure that their investment products do not expose retail investors to underlying assets the risk and reward profile of which is not easily understandable.***
- (8b) ***The competent authorities and the European supervisory authorities (ESAs) should be provided, upon request, 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. The powers of the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) should be aligned in a consistent manner with those of the European Securities and Markets Authority (ESMA) under Directive of the European Parliament***

¹ 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 (OJ L 345, 31.12.2003, p. 64).

² 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) (OJ L 335, 17.12.2009, p. 1).

and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and the Council [MIFIR].

- (9) Investment product manufacturers – such as fund managers, insurance undertakings, issuers of securities, credit institutions or investment firms – should draw up the key information document for the investment products they manufacture, as they are in the best position to know the product and are responsible for it. ***Investment product manufacturers should make the key information document available to the persons selling the investment product.*** The ***key information*** document should be drawn up by the investment product manufacturer, ***and the annex (including fees), by the person selling the investment product*** before the products 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 investment product manufacturer to draw up the key information document, this may be delegated to others. ***Where the drawing up of the key information document is delegated wholly or partially to third parties, the investment product manufacturer should retain general responsibility for its drawing up and content.*** In order to ensure widespread dissemination and availability of key information documents, this Regulation should allow for publication by the investment product manufacturer by means of a website of their choice.
- (10) To meet the needs of retail investors, it is necessary to ensure that information on investment products 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 ***understandable by*** 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. ***The calculations of the costs that may arise should also be explained in an understandable manner.*** Furthermore, retail investors should be able to understand the key information document on its own without referring to other information. ***However, this should not preclude the use of cross-references within the key information document to other documents where additional information can be found that might be of interest to some retail investors.***

- (11) Retail investors should be provided with the information necessary for them to take an informed investment decision and compare different investment products, but unless the information is short and concise there is a risk they will not use it. The key information document should therefore **■** contain *only* key information, notably as regards the nature and features of the product, including whether it is possible to lose capital, the costs, **■** *and the risk reward profile, in the form of a summary indicator, of the product, and its underlying investment*, as well as relevant performance information, and certain other specific information which may be necessary for understanding the features of individual types of products, including those intended to be used for retirement planning. *The Commission should consider the opportunity for the European public credit rating agency referred to in the Position of the European Parliament adopted at first reading on 16 January 2013 with a view to the adoption of Regulation (EU) No .../2013 of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies¹ to provide key information on the risk profile related to sovereign bonds issued by Member States.*
- (11a) *Investors should be provided with a clear idea of what costs and fees will be incurred in their investment, not only at the point of transaction, but over a period of investment. Fees should be fully disclosed in compound, cumulative terms, as well as in monetary terms. Charges for advice should be calculated in a simpler way to make it easier for the investor to understand what it will cost them.*
- (11b) *EBA, EIOPA and ESMA should develop an online fund analyser which would allow investors to calculate the end value of their investment after fees and costs have been taken into account.*
- (12) The key information document should be drawn up in a format which allows retail investors to compare different investment products, since consumer behaviours and capabilities are such that the format, presentation and content of information must be carefully *designed and drafted* to maximise *engagement with the key information document and so to enhance financial education*, understanding and *the* 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 products and the presentation of this information

¹ *Texts Adopted, P7_TA(2013)0012.*

should be further harmonised through delegated acts 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 investment products give the retail investor a choice between multiple underlying investments **and may have costs and charges that depend upon the customer's personal characteristics, such as their age or on their chosen investment amount**. Those products should be taken into account when drawing up the format.

- (12a) ***A complexity label for complex products which appear to be unsuitable for retail investors should appear at the top of the key information document. This extra layer of transparency will help consumers make an informed decision about the level of risk they are taking and help avoid the mis-selling of products.***
- (13) Increasingly retail investors are not only seeking financial returns with their investment decisions. Often they also pursue other purposes such as social or environmental goals. In addition, information about non-financial aspects of investments can be important for those seeking to make sustainable, long-term investments. However, information on social, environmental or governance outcomes being sought by the investment product manufacturer can be difficult to compare or may be absent. Therefore, it is desirable to further harmonise the details of the information on whether environmental, social or governance issues have been taken into account, and if so in what ways.
- (14) The key information document should be clearly distinguishable **and separated** from any marketing communications. Its significance should not be diminished by those other documents. ***The retail investor should confirm receipt.***
- (15) In order to ensure that the key information document contains reliable information, this Regulation should require investment product manufacturers **and persons selling investment products** to keep the key information document up to date. ***The entity providing or selling the key information document should also keep the information provided to the retail investment 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 **and its annex** are laid down in a delegated act to be adopted by the Commission. ***The key information document and all its updates should be communicated to the competent authority.***

- (16) Key information documents are the foundation for investment decisions by retail investors. For this reason, investment product manufacturers **and persons selling investment products** have an important responsibility towards retail investors in ensuring that they comply with the rules of this Regulation. It is therefore important to ensure that retail investors who relied on a key investor document for their investment decision 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 investment product manufacturers in complying with the requirements set out in this Regulation. Therefore, rules regarding the liability of the investment product manufacturers should be harmonised. **Also, a harmonised approach to penalties should be introduced in order to ensure consistency.** This Regulation should establish that the retail investor should be able to hold the product manufacturer liable for an infringement of this Regulation in case a loss is caused through the use of the key information document **that was misleading, inaccurate or inconsistent with the prospectus or, where no prospectus is prepared, the terms and conditions of the product.**
- (17) As retail investors in general do not have close insight as to the internal procedures of investment product manufacturers, **the retail investor should not bear** the burden of proof. **The retail investor should indicate in what respect he considers** that the key information document **does not comply with the requirements of** this Regulation. **It should then be incumbent upon the product manufacturer to respond to the claim.**
- (18) **The** civil liability of **an** investment product manufacturer **which is not covered by this Regulation** should be governed by the applicable national law determined by the relevant rules of International Private 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 selling investment products should be required to provide the key information document in good time before any transaction is concluded. **The investor should provide a signature, in writing or electronically, to demonstrate that they have received the key information document.** This requirement should **apply** irrespective of where or how the transaction takes place. Persons **advising on or** selling include both distributors and the investment product manufacturer themselves where they choose to **advise on or selling** the product

directly to retail investors. ***This Regulation is without prejudice to the Directive 2002/65/EC of the European Parliament and the Council¹. Where possible, investors should be provided with a "cooling-off period" during which they may decide to cancel the transaction.***

- (20) Uniform rules should be laid down in order to give the person selling the investment product 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 investment products ***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 investment product manufacturer to complaints.
- (21a) ***Although improving investment product disclosures is essential to rebuilding the trust of retail investors in the financial markets, product design rules are equally important to ensure effective retail investor protection. Imperfect advice from financial advisors, bias in decision-making and evidence that financial behaviour depends primarily on psychological attributes give rise to issues that need to be addressed through curbing complexity in the packaging of investment products.***
- (22) Procedures for alternative dispute resolution allow for a quicker and less expensive settlement of disputes than the courts and lighten the burden on the court system. For that purpose investment product manufacturers and the persons selling investment products should be under an obligation to participate in those procedures initiated by retail investors concerning the rights and obligations established by this Regulation, subject to certain safeguards in conformity with the principle of effective judicial protection. In

¹ ***Directive 2002/65/EC of the European Parliament and of the Council on 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).***

particular, the procedures for alternative dispute resolution should not infringe the rights which the parties to such procedures have to bring legal proceedings before the courts.

Directive 2013/11/EU of the European Parliament and of the Council¹ should apply to disputes under this Regulation.

- (23) As the key information document should be produced for investment products 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 investment product manufacturers so that they have a common approach to the application of this Regulation.
- (23a) The increase of powers and competences allocated to the Union and national supervisory authorities should be facilitated through sufficient staff resources and appropriate financial means.***
- (24) In line with the Commission Communication of December 2010 on reinforcing sanctioning regimes in the financial sector and in order to ensure that the requirements set out in this Regulation are fulfilled, it is important that Member States take necessary steps to ensure that breaches of this Regulation are subject to appropriate administrative sanctions and measures. In order to ensure that sanctions have a dissuasive effect and to strengthen investors' protection by warning them about investment products marketed in breach of this Regulation, sanctions and measures should ■ be published ■ .
- (25) In order to fulfil the objectives of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying details with regard to the presentation and the format of the key information document, on the content of the information to be included in the key information document, detailed requirements with regard to the timing for provision of the key information document as well as in relation to its revision and review. It is of particular importance that the Commission carry out appropriate consultations ***and consumer testing*** during its preparatory work. The Commission, when

¹ ***Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63).***

preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

- (26) The Commission should adopt draft regulatory technical standards developed by ESMA, EBA and EIOPA according to Article 8 regarding the methodology underpinning the presentation of risk and reward and the calculation of costs ***and environmental social or governance criteria*** by the means of delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union and in accordance with the respective Articles 10 to 14 of the Regulations (EU) No 1093/2010, 1094/2010 and 1095/2010 of the European Parliament and of the Council¹.
- (27) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data governs the processing of personal data carried out in the Member States in the context of this Regulation and under the supervision of the competent authorities. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data, governs the processing of personal data carried out by the ***ESAs*** 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 ***ESAs*** 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

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) (OJ L 331, 15.12.2010, p. 12), Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) (OJ L 331, 15.12.2010, p. 48) and Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 84).

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. ***The same exemption should also apply to non-UCITS funds when these are already required under national laws to establish a key investor information document according to the format and content defined in Articles 78 to 81 of Directive 2009/65/EC.***

- (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 investment products, as well as developments in other areas of Union law and the experiences of Member States. The review should assess whether the measures introduced have improved the average retail investors' ***protection and*** understanding of investment products, ***their financial education*** and the comparability of the products. It should also consider whether the transitional period applying to UCITS should be extended, or whether other options for the treatment of UCITS might be considered. On the basis of the review, the Commission should submit a report to the European Parliament and the Council accompanied, if appropriate, by legislative proposals.
- (30) In order to give investment product manufacturers and persons selling investment products 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. ***This Regulation should not apply to transactions which have taken place in the past.***
- (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 this Regulation, namely to enhance retail investors' protection and improve their confidence in investment products ***and to address identified weaknesses***, including where ***those*** products are sold cross-border, cannot be sufficiently achieved by the Member States acting independently of one another, **■** but can rather, 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 ***that objective***,

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 *exclusively* by *the* investment product manufacturers, *on the annex to the key information document, which shall be drawn up, where necessary, by the persons selling investment products, on the information to be provided to retail investors by the persons selling investment products in accordance with [MiFID] and Directive of the European Parliament and of the council on insurance mediation [IMD]* and *on* uniform rules on the provision of *those documents* to retail investors. *It aims to enable retail investors to understand and compare the key features and risks of investment product and allocates responsibility to the product manufacturer for the key information document and to the persons selling investment products for the annex.*

Article 2

This Regulation shall apply to the manufacturing and selling of investment products.

However, it shall not apply to the following products:

- (a) insurance products which do not offer a surrender value ■ ;
- (b) deposits *other than structured deposits as defined in Article 4 of [MiFID]*;
- (c) securities referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC;
- (d) other securities which do not embed a derivative, *with the exception of corporate bonds and instruments issued by special purpose vehicles (SPVs)*;
- (e) *officially recognised* occupational pension schemes ■ and *individual pension products for which a financial contribution from the employer is required by national law and where the employee has no choice as to the provider*;
- (f) *officially recognised social security schemes subject to national or Union law.*

Article 3

1. Where investment product manufacturers subject to this Regulation are also subject to Directive 2003/71/EC, this Regulation and Directive 2003/71/EC **with the exception of its Article 4(2)(h)(v) thereof**, shall both apply.
2. Where investment product 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) 'investment product' means **a product through which a person can make a financial investment , regardless of the legal form and regardless whether the amount repayable is fixed or variable, including where an investment product is obtained through the direct holding of financial instruments, vehicles or holdings;**
- (b) 'investment product manufacturer' means:
 - (i) any natural or legal person who **originally** manufactures an investment product;
 - (ii) any natural or legal person who makes changes to an existing investment product by altering its risk and reward profile or the costs associated with an investment in the investment product;
 - (iia) the issuer of transferable securities offered to the public or admitted to trading on a regulated market pursuant to the provisions of Directive 2003/71/EC and directly held by the retail investors.**
- (ba) "person selling investment products" means a person advising, marketing, distributing or selling investment products to a retail investor, a distributor or a person acting as an intermediary for an investment by a retail investor;**
- (c) 'retail investors' means:
 - (i) retail clients as defined in ■ [reference to MIFID/MIFIR];

- ii) customers *who are not professional customers as defined in [Annex I of IMD] [...]*;
- (d) 'pension products' means products which under national law are recognised as having the primary purpose of providing the *retail* investor an income in retirement, and which entitles the *retail* 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 of Member States, legally empowered to supervise the investment product manufacturer or a person selling an investment product to a retail investor.

CHAPTER II

KEY INFORMATION DOCUMENT

SECTION 1

DRAWING UP THE KEY INFORMATION DOCUMENT

Article 5

The investment product manufacturer shall draw up a key information document in accordance with the requirements laid down in this Regulation **and** for each investment product it produces and shall publish the *key information document, together with the prospectus, where relevant, on its website and on a single website to be created by the relevant ESA and the relevant national supervisory authority* before the investment product can be *distributed in the market and* sold to retail investors.

The key information document shall be completed by an annex, where appropriate. The person selling the investment product shall complete the key information document by drawing up and annex thereto. The document and its annex shall also be available in paper form.

The investment product manufacturer shall be responsible for the contents of the key information document, the person selling the product shall be responsible for the annex and for

passing the document on to the retail investor, and the person selling the product shall be responsible for the annex and for passing the document on to the retail investor.

Article 5a

Product approval process

- 1. An investment product manufacturer shall ensure that appropriate procedures and policies provide for a balanced consideration of the interests of retail investors, clients and the beneficiaries of such investment product during the development of the investment product, and that the investment product is demonstrably the result of such a balanced consideration.*
- 2. Before drawing up a key information document in accordance with Article 5 the product manufacturer shall assess the compatibility of the investment product with the interests of retail investors by establishing a documented product approval process.*
- 3. The product approval process shall ensure that each investment product meets the needs of an identified consumer group and that the product manufacturer has undertaken an assessment of all likely risks relevant for the needs of the identified consumer group. Such an assessment shall include stress testing of the investment product.*
- 4. The product approval process shall ensure that investment products that are already available on the market are regularly reviewed in order to ensure that the product continues to be compatible with the interests of the identified consumer group.*
- 5. The product approval process shall be reviewed annually. The investment product manufacturer shall at all times be able to provide the relevant competent authority with an up-to-date and detailed description of the nature and the details of the product approval process.*

SECTION II
FORM AND CONTENT OF THE KEY INFORMATION DOCUMENT

Article 6

1. The key information document shall be accurate, fair, clear and not misleading. ***The key information document shall not contain any product advertisements, marketing material, personal endorsements or recommendation to invest.***
2. The key information document shall be a stand-alone document, clearly separate from, ***but not inferior to***, marketing materials. ***It may contain cross-references to other documents such as a prospectus, where the cross-reference is to information that is additional to the information required to be included in the key information document by this Regulation. It shall not contain cross-references to marketing material.***
 - 2a. ***Where an investment product provides a retail investor with options in relation to the investment term, choice of benefits or payment amounts or offers a range of underlying investments they can choose from, or where elements of the information in the key information document can vary and depend upon factors specific to an individual retail client, the information required by Article 8(2) may be presented in generic terms and as representative examples. Where this situation arises, the key information document shall clearly indicate in which documents more specific information will be provided.***
 - 2b. ***The key information document shall clearly specify where and how to obtain additional information about the proposed investment, including where and how a prospectus can be obtained. A prospectus shall be made available on request and free of charge at any time, and in the language in which such information is available to retail investors.***
3. The key information document shall be drawn up as a short document ***written in a concise manner of a maximum of two double-sided A4 pages and an annex 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 by* the retail *investors at whom it is targeted*, 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 investment product 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

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 investment product 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.

Article 7a

Where the key information document concerns an insurance contract, the insurance undertaking has obligations under this Regulation only towards the policyholder and not towards the beneficiary or insured.

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 other than the annex thereto shall be produced by one party. The key information document shall carry the name of the product manufacturer responsible for drawing up the key information document and shall clearly state that the product manufacturer is liable for its contents. The annex shall similarly be produced by the person selling and shall state the name of the person or entity and clearly declare that it is liable for the contents of the annex.*

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

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

‘You are preparing to buy an investment product.

This document provides you with key information to help you understand the features, risks, costs, potential gains and losses associated to it and in its annex the fee paid to the person selling.

This document is required by law, is not marketing material and is in a standard format to allow comparison.’

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

- (a) **█** the name of the investment product and identity of the investment product manufacturer, *and holder of legal liability for the document (name and address)*;
- (b) under a section titled "What is this investment?", the nature and main features of the investment product, including
 - (i) the type of the investment product;
 - (ii) its objectives and the means for achieving them;
 - (*ia*) *information about the intended consumer group of the product including a description in simple terms of the types of investors for whom the investment product is intended, in terms of risk appetite, investment horizon and financial knowledge which is based on the product approval process which the product manufacturer has carried out when structuring the investment product;*
 - (iii) *a notification* whether *or not* the investment product **█** targets specific environmental, social or governance outcomes, *including but not limited to reducing the carbon footprint*, how these are *measured and whether or not the product is an investment linked to the production of goods and services, as opposed to solely operations on the financial markets or a synthetic index;*

(iia) the breakdown of the underlying asset portfolio by economic sector directly or indirectly financed;

■

- (c) under a section titled *"What decisions do I have to make?"*, information about the various decisions a retail investor must make, e.g. fund choice, term, size of premium, including what other benefits or benefit triggers are available;

■

- (d) under a section titled ■ *"What are the risks and what might I get back *in return*?"* having regard to the ■ market evolution it targets:
- (i) *the risk and reward profile of the investment product, including a summary indicator consisting of a clear and easily understandable visualisation of the risk and reward profile of the investment product;*
 - (ii) *indicative future net performance scenarios, accompanied by a narrative explanation of the key risks of the product to put the profile into context; the description of the risks should be clear and easy to understand;*
 - (iii) *for pension products, under a sub-section titled "What might I get when I retire?", projections of possible future outcomes explicitly subdivided into various development scenarios, including the worst-case scenario.*

The relevant European Supervisory Authority (ESA) shall develop draft regulatory technical standards laying down the precise definition of a limited range of risk categories and the standards for the visualisation of the summary indicator.

It 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 second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

- (e) under a section titled *"What can happen with my investment? Are there backstops and what do they cost?"* a clear indication of whether loss of capital is possible

- (i) *any guarantees and/or capital protection provided, as well as any limitation to these, the aggregated amount including the identity of the possessor of such liability;*
 - (ii) *whether the investment product is covered by a compensation or guarantee scheme, and if so, which scheme, the name of the guarantor and which risks are covered by the scheme and which are not;*
 - (iii) *under a sub-section 'Am I protected by insurance?', a clear notification as to whether or not the investment product comprises insurance and if so information about such insurance cover;*
 - (iv) *if relevant, other protective measures such as fund depositary, including the identity and function of the parties involved;*
- (ea) *under a sub-section entitled: "What happens if the investment product manufacturer or seller default?", a brief description of the maximum loss for the retail investor and reference to whether the loss can be recovered by a retail investor compensation or guarantee scheme;*
- (eb) *under a section titled "What happens if/when I die?", information about what happens to the money held by the product/funds and any additional death benefit;*
- (f) under a section titled "What are the costs?", the **total** costs associated with an investment in the investment product, comprising **all** direct and indirect costs to be borne by the investor, including summary indicators of these costs, **including:**
- (i) *entry, on-going and exit costs to be borne by the retail investor, as well as premium payment terms and flexibility, making a clear distinction between matters that are the responsibility of the product manufacturer and those that are the responsibility of the persons selling investment products, including summary indicators of those costs;*
 - (ii) *all annual charges and other payments taken from the product over a defined period, including any variable charges (such as transaction costs, stock exchange taxes), which cannot be included in the calculations of costs.*

The costs and deductions shall be indicated in a way that shows their compound cumulative effect on the investment over representative periods of investment; and, for comparability reasons, total costs expressed in monetary examples and percentage terms, to show the effects of the total costs on the investment.

If the investment product has a margin cap for possible returns which reduces the net return to the retail investor by giving the manufacturer all profit above the cap, this should be clearly disclosed.

Information shall be provided on how to access the independent online fund calculator operated by the relevant ESA;

■

- (h) *under a section "Can I take money out ?":*
 - (i) *the possibility of a cooling off for the investment product.*
 - (ii) *an indication of the recommended or required minimum holding period,*
 - (iii) *the possibility and conditions for any disinvestments before maturity, having regard to the risk and reward profile of the investment product 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;*
 - (v) *an indication of the average investment horizon of the underlying asset portfolio, based on the average turnover of securities held for trading and the average maturity of debt securities held to maturity.*

- (ha) *under a section titled "How will I know how my product is doing?", a statement that the manufacturer will transparently inform the customer through a yearly document about the achievement of the investment product. This document shall contain an ex-post disclosure of the investment product's return in the past year. Furthermore, this ex-post return shall be compared to a different investment product with a comparable risk profile. If the customer owns several investment products of a certain manufacturer and covered by this regulation, the*

aforementioned disclosure and comparison shall be applied to the whole portfolio. Any cost affecting the yield of the investment product shall also be disclosed.

- (hb) under a section titled "How can I complain?", information about how and to whom a client can make a complaint about the product and its administration;*
 - (hc) under a section titled "What are the other legal documents related to this product", a brief description of documentation (including a prospectus, where relevant) and excluding any marketing material;*
 - (hd) at a section near the end of the document, a new heading entitled "Information about the product", which states, where applicable, the product's:
 - (i) international securities identification number (ISIN);*
 - (ii) international standards on auditing (ISA) number;*
 - (iii) interest rate;*
 - (iv) stock exchange linked to the product;*
 - (v) currency; and*
 - (vi) issue date.**
 - (he) name and contact details of the competent authority which regulates the product;*
 - (hf) under a section titled "Insurance benefits", an indication if the investment product offers insurance benefits and if so, details of these insurance benefits, in accordance with Directive 2009/138/EC, save for Article 8(2) thereof. Where the contract gives a choice between several unit linked life insurances, it shall also include a summary table classifying these units in three categories, according to their riskiness.*
- Having regard to Directive 2009/138/EC and in accordance with Article 8 of this Regulation, EIOPA shall be empowered to determine:*
- (i) the main features of the insurance contract;*
 - (ii) the exact form of the specific insurance document;*

- (iii) the content of the specific insurance document, including the asset allocation options offered to the retail investor;*
- (iv) the rules to classify the units in three categories.*

The investment product manufacturer shall distribute a key information document for each underlying investment of insurance contracts eligible to this Regulation. The underlying investments include the units of account and/or the currency-denominated funds if relevant and the category of riskiness attached to each of them.

3. The annex to the key information document shall disclose the identity of the person selling investment products and also, where applicable, shall specify:

- (a) an indication that national tax legislation of the investor's home Member State may have a significant impact on the expected and actual return of investment;*
- (b) the costs related to the investment product when he is the intermediary, including the commissions, retrocessions or other benefits related to the transaction paid by the manufacturer or a third party, as provided for in Directive 2004/39/EC and in Directive 2002/39/EC¹.*

3a. The relevant ESA shall develop an independent online fund calculator which will be included on its website. The fund calculator shall allow investors to compute the reward of a proposed retail investment product by entering information on the expected duration of the investment, the amount of the investment, and the assumed underlying investment return in percentage terms in order to determine the end value of the investment after costs.

The fund calculator shall include in its calculation the costs and fees charged by the various investment product manufacturers for any fund sold to the public, together with any further costs or fees charged by intermediaries or other parts of the investment chain, not already included by the product manufacturers.

¹ *Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services (OJ L 176, 5.7.2002, p. 21).*

Investment product manufacturers and persons recommending or selling investment products shall be required to submit relevant data to the relevant ESA on a quarterly basis, with a maximum delay of 60 days for that purpose.

The relevant ESA shall be provided with the resources with which to carry out this work. It shall work closely with the other ESAs where necessary.

4. The information referred to in paragraph 2 shall be presented in a common format including the common headings and following the standardised order set out in paragraph 2, so as to allow for comparison with the key information document for any other investment product ***and*** prominently display a common symbol to distinguish the document from other documents.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 specifying the details of the presentation and the content of each of the elements of information referred to in paragraph 2, ***including the effect of introducing risk indicators, and in paragraph 3(a)***, the presentation and details of the other information the product manufacturer ***and the person selling investment products*** may include within the key information document as referred to in paragraph 3, and the details of the common format and the common symbol referred to in paragraph 4. The Commission shall take into account the differences between investment products and the capabilities of retail investors as well as the features of investment products 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 Commission shall also be empowered to adopt delegated acts laying down guidelines for the development of Union criteria for social and environmental investment products. Those criteria should support long-term financing economy and promote sustainable environmental and social development in financial investments and promote the establishment of a Union-wide label for sustainable investment. The Commission shall also be empowered to adopt delegated acts laying to define the standards for those environmental notifications on the possible environmental risks.

Before adopting the delegated acts set out in this paragraph, the Commission shall conduct consumer testing in order to select the most appropriate measures for retail

investors. The Commission in close cooperation with the ESAs shall also draw up sample key information documents that take into account the differences between investment products.

6. EBA), EIOPA and the ESMA shall develop draft regulatory standards to determine:
- (a) the methodology underpinning the presentation of risk and reward *profiles* as referred to in point (e) of paragraph 2 of this Article;
 - (b) the calculation of costs, *including the specification of summary indicators*, as referred to in point (f) of paragraph 2 of this Article;
- (ba) the principles to be used for environmental, social or governance outcomes as referred to in paragraph 2(b)(iii);*
- (bb) in relation to each of the questions referred to in this Article, the list of products to which they apply.*

The draft regulatory technical standards shall take into account the different types of investment products *and the work already performed under [MiFID], [IMD], Directive 2003/71/EC, Directive 2009/138/EC and Directive 2009/65/EC introducing a key investor information document for UCITS.*

The *ESAs* shall submit those draft regulatory technical standards to the Commission by [...].

Power is conferred on the Commission to adopt the regulatory technical standards *referred to in the first subparagraph* in accordance with the procedure set out in 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 8a

Complexity label

1. *Investment products exposed to one or more of the risks described in paragraph 2 shall disclose at the top of the first page of the key information document in clearly visible print the following statement:*

"Complexity label: This product is considered to be very complex, and may not be appropriate for all retail investors."

2. *Investment products shall be considered not to be aimed at retail investors if one or more of the following conditions are met:*

- (a) the risk-reward profile or the costs are presented in an overly complicated manner;*
- (b) the product invests in underlying assets not commonly invested in by non-professional investors;*
- (c) the risk-reward profile is conditional upon the simultaneous occurrence of two or more events linked to at least two different asset classes;*
- (d) a number of different mechanisms are used to calculate the final return on the investment, creating a greater risk of misunderstanding on the part of the retail investor;*
- (e) the investment return includes packaging features which take advantage of retail investors' behavioural biases, such as by offering a "teaser" fixed rate followed by a much higher floating conditional rate, or an iterative formula;*
- (f) the global exposure of the financial product, measured by its monthly value-at-risk calculated within a 99 % confidence interval at the time of trade, is above 20 %.*

3. *The ESAs shall develop guidelines on the conditions referred to in paragraph 2.*

The ESAs shall submit those draft regulatory technical standards to the Commission by ... [OJ please insert date: 6 months after the publication of this Regulation in the OJ].*

Power is conferred on 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, of Regulation 1094/2010 and of Regulation (EU) No 1095/2010.

Article 9

Marketing communications ■ relating to the investment product shall not include any statement that contradicts the information contained in ■ or diminishes the significance of the key information document. Marketing communications shall *inform* that a key information document is *published*

on an official website of the competent authority with the direct link. A paper copy may be forwarded upon request to the manufacturer or to the persons selling investment products free of charge.

Article 10

1. The investment product manufacturer shall review the information contained in the key information document regularly and **shall** revise the document where the review indicates that **material** changes need to be made **in accordance with Article 8, in particular if materially significant changes have been made to the product and in particular with regard to the appreciation of risks or the creation of value in the investment management and relevant risk in the investment management, and make available promptly the revised version. Such a revision shall include the utilisation of the standards defined in the investment product key information documents which indicate that changes need to be made. This shall be expressed clearly, concisely and comprehensibly in the descriptive part of the annual report and shall include a true and fair summary of the performance of the investment assets, the total aggregated, the costs, the investment management strategies, the creation of value in the investment management and the development of relevant risk in the investment management, including the standards laid down in the investment product key information documents.**
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 laying down detailed rules for the review of the information contained in the key information document and the revision of the key information document, **having regard to the nature of the investment product**, as regards:
 - (a) the conditions and the frequency for reviewing the information contained in the key information document;
 - (b) the conditions under which information contained in the key information document must be revised, and under which it is obligatory or optional to republish **and redistribute** the revised key information document;
 - (c) the specific conditions under which information contained in the key information document must be reviewed or the key information document revised where an investment product is made available to retail investors in a non-continuous manner;

- (d) the circumstances *referring to the product itself or the market conditions* in which retail investors are to be informed about a revised key information document for an investment product purchased by them.

Article 11

1. ***Key investor information is pre-contractual information. It shall therefore be 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 investment product.*** Where an investment product manufacturer has produced a key information document which does not comply with the requirements of ***this Regulation and*** on which a retail investor has relied when making an investment decision, such a retail investor may claim from the investment product manufacturer damages for any loss caused to that retail investor through the use of the key information document ***and may, where appropriate, return the investment product and have losses refunded.*** ***Where a person selling investment products has produced an annex to a key information document which does not comply with the requirements of this Regulation and on which a retail investor has relied when making an investment decision, such a retail investor may claim, from the person selling investment products, damages for any loss caused to that retail investor through the use of the annex and may, where appropriate, return the investment product and have losses refunded.***
2. When a retail investor demonstrates a loss ***and that identified*** information contained in the key information document ***was misleading***, the investment product manufacturer ***or the person selling investment products shall*** prove that the key information document has been drawn up in compliance with Articles 6, 7 and 8 of this Regulation. ***Civil liability of the investment product manufacturer may arise in such cases on the basis of the key information document, including any translation thereof.***
3. ***The product manufacturer shall be liable under civil law if a retail investor incurs losses resulting from their reliance on a key information document that failed to meet the requirements under paragraph 1 or 2 above. Such liability shall not be limited or waived by contractual clauses, or by way of approval of the competent authority.***

SECTION III
PROVISION OF THE KEY INFORMATION DOCUMENT

Article 12

1. A person selling an investment product to retail investors shall provide them with the key information document *drawn up by the investment product manufacturer promptly and in good time before any commitment is entered into* relating to the investment product. *Where an investment product is recommended to a client, the key information document shall be provided promptly.*
 - 1a. *A person shall obtain prior written permission from the investment product manufacturer to distribute their key investor document to the retail investor. Such permission may be given by the investment product manufacturer on an indefinite basis, for a limited period of time, or subject to conditions. Where any specified condition is not met, such permission shall be deemed not to have been granted for the purposes of this paragraph.*
 - 1b. *The retail investors shall confirm in writing or electronically that they have received the key information document.*
2. By way of derogation from paragraph 1, *and subject to Article 13(5)*, a person selling an investment product *shall* provide the retail investor with the *official website where the* key information document *can be found before* conclusion of the transaction where:
 - (a) the retail investor chooses to conclude the transaction using a means of distance communication;
 - (b) the provision of the key information document in accordance with paragraph 1 is not possible; ■

(ba) the retail investor asks to receive the key information document straight after the conclusion of the transaction, rather than delaying the transaction in order to receive the document in advance. The person selling or advising on the investment product shall not offer this option before the retail investor requests it;

- (c) **█** the person selling the investment product has informed the retail investor of this fact.
3. Where successive transactions regarding the same investment product are carried out on behalf of a retail investor in accordance with instructions given by that *retail* investor to the person selling the investment product prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall only apply to the first transaction, ***unless the key information document has been updated since the first transaction or a new annual report is available.***
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 specifying:
- (a) the conditions for fulfilling the requirement to provide the key information document in good time as laid down in paragraph 1;
- (b) the method and the time limit for the provision of the key information document in accordance with paragraph 2.

Article 13

1. The person selling an investment product shall provide the key information document ***before a binding agreement is made with a retail investor and free of charge. A paper copy shall be provided free of charge where the investment recommendation or the intermediary service is provided in person.***
2. The person ***advising on or*** selling an investment product, ***or acting as an intermediary in its sale,*** shall provide the key information document to the retail investor in one of the following media, ***which must be genuinely accessible for the retail investor:***
- (a) on paper;
- (b) using a durable medium other than paper, where the conditions laid down in paragraph 4 are met; or
- (c) by means of a website where the conditions laid down in paragraph 5 are met.

3. However, where the key information document is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to retail investors upon request and free of charge.
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 an investment, *or acting as an intermediary in its sale*, product 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.
5. The key information document may be provided by the means of a website if the key information document is addressed personally to the retail investor or if 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 an investment product, *or acting as an intermediary in its sale*, and the retail investor;
 - (b) the retail investor has consented to the provision of the key information document by means of a website;
 - (c) the retail investor has been notified electronically 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 *the most recent version* shall also be *provided* to the retail investor; *on request of the retail investor, previous versions shall also be provided*;
 - (e) it is ensured that the key information document remains accessible on the website for such period of time as the retail investor may reasonably 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 investment product 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

PRODUCT INTERVENTION

Article 13a

Intervention powers of the ESAs

- 1. *In accordance with Article 9(2) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 or of Regulation (EU) No 1095/2010, the ESAs shall monitor investment products or financial instruments which are marketed, distributed or sold in the Union. The ESAs may investigate new investment products or financial instruments before they are marketed, distributed or sold in the Union in cooperation with the competent authorities.***

- 2. *In accordance with Article 9(5) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 or of Regulation (EU) No 1095/2010, an ESA may, where it is satisfied on reasonable grounds that the conditions in paragraphs 3 and 4 of this Article are fulfilled, temporarily prohibit or restrict in the Union the marketing, distribution or sale of investment products or financial instruments.***

The ESAs may specify in which circumstances a prohibition or restriction is to apply or be subject to exceptions.

- 3. *An ESA shall only take a decision under paragraph 2 if all of the following conditions are fulfilled:***
 - (a) the proposed action addresses a significant threat to retail investor protection or 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 investment product, financial instrument or activity do not address the threat;***

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

Where the conditions set out in the first subparagraph are fulfilled, an ESA may impose a prohibition or restriction as referred to in paragraph 2.

4. *When taking action under this Article an ESA shall take into account the extent to which the action neither:
 - (a) *has a detrimental effect on the efficiency of financial markets or on retail investors that is disproportionate to the benefits of the action; nor*
 - (b) *creates a risk of regulatory arbitrage.**

Where a competent authority or competent authorities have taken a measure under Article 13b, an ESA may take any of the measures referred to in paragraph 2 without issuing the opinion provided for in Article 13c.

5. *Before deciding to take any action under this Article, an ESA shall notify the competent authorities of the action it proposes.*
6. *Before taking a decision under paragraph 2, an ESA shall give notice of its intention to prohibit or restrict an investment product or financial instrument unless certain changes are made to features of the investment product or financial instrument within a specified timescale.*
7. *Each ESA 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.*
8. *The relevant ESAs shall review a prohibition or restriction imposed under paragraph 2 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.*
9. *Action adopted by the ESAs under this Article shall prevail over any previous action taken by a competent authority.*
10. *The Commission shall adopt delegated acts in accordance with Article 23 specifying criteria and factors to be taken into account by the ESAs in determining when the threats to retail investor protection or 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 3(a) arise. Those delegated acts shall ensure that the ESAs are able to act, where appropriate, on a precautionary basis and that they are not be required to wait until the investment product or financial instrument has been marketed, distributed or sold, or the type of activity or practice has been undertaken before taking action.

Article 13b

Product intervention by competent authorities

- 1. Investment product manufacturers shall communicate the key information document of their investment product to the competent authority which regulates that product in the Member State where it is marketed, distributed or sold.*
- 2. Investment product manufacturers shall communicate updates to the key investor document, reflecting materially significant changes as defined by the ESA(s), to the competent authority which regulates that product in the Member State where it is marketed, distributed or sold.*
- 3. The competent authority may ensure compliance of the content laid down in the key information document with the provisions of the Chapter II of this Regulation prior to the marketing, distribution or sale of the investment product.*
- 4. The competent authority may investigate new investment products or financial instruments before they are marketed, distributed or sold in or from the Member State.*
- 5. A competent authority may prohibit or restrict in or from that Member State:*
 - (a) the marketing, distribution or sale of investment products or financial instruments;*
 - (b) a type of financial activity or practice.*
- 6. A competent authority may take the action referred to in paragraph 6 if it is satisfied on reasonable grounds that:*
 - (a) an investment product, a financial instrument or activity or practice gives rise to significant investor protection concerns or poses a serious threat to the orderly functioning and integrity of financial markets or the stability of whole or part of*

the financial system within one or more Member States, including through the marketing, distribution, remuneration or provision of inducements related to the investment product or financial instrument;

- (b) a derivative product has a detrimental effect on the price formation mechanism in the underlying market;*
- (c) existing regulatory requirements under Union law applicable to the investment product, financial instrument 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;*
- (d) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of retail investors or market participants concerned and the likely effect of the action on retail investors and market participants who may hold, use or benefit from the financial instrument or activity;*
- (e) the competent authority has properly consulted competent authorities in other Member States that may be significantly affected by the action; and*
- (f) 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 a prohibition or restriction on an investment product or financial instrument marketed, distributed or sold to clients in or from the Member State.

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

- 7. Before imposing a prohibition or restriction under paragraph 5, the competent authority shall give notice of its intention to prohibit or restrict an investment product or financial instrument unless certain changes are made to features of the investment product or financial instrument within a specified timescale.*
- 8. The competent authority shall not impose a prohibition or restriction under this Article unless, not less than one month before it takes the action, it has notified all other*

competent authorities involved and the ESAs in writing or through another medium agreed between the authorities of details of:

- (a) the financial instrument 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 6 are met.*

- 9. Where the time needed to consult in accordance with paragraph 3(e) and the one-month delay provided for in paragraph 8 could cause irreversible damage to consumers, the competent authority may take action under this Article on a provisional basis for a period not exceeding three months. In that case the competent authority shall immediately inform all other authorities and the ESAs of the action taken.*
- 10. The competent authority shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 5. 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 6 are met. The prohibition or restriction shall only apply in relation to actions taken after the publication of the notice.*
- 11. The competent authority shall revoke a prohibition or restriction if the conditions in paragraph 6 no longer apply.*
- 12. 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 the threats to investor protection or 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 3(a) arise.*

Article 13c

Coordination role of the ESAs

1. *Each ESA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 13b. In particular each ESA 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 13b of any action that is to be imposed under that Article, an ESA shall adopt an opinion on whether it considers the prohibition or restriction is justified and proportionate. If the ESA 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 the ESA's website.*
3. *Where a competent authority proposes to take, or takes, action contrary to an opinion adopted by an ESA 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.*

Article 13d

Disclosure of fees and costs

The following information shall be provided by the person selling the investment product on a document separate from the key information document:

1. *All fees referred to in Article 8(2)(c) shall be disclosed cumulatively. They shall not be reclassified as part of the investment when they appear in a lower layer of the investment.*
2. *Investment advice charges shall not be based on flat percentage rates, unless prior agreement is obtained by the investor. If a flat percentage rate is agreed, the person selling the investment product shall provide full disclosure of what this will signify over the duration of the investment, or for a time period requested by the investor.*
3. *The person selling the investment product, or advising the investor, shall provide the investor with a breakdown of the time spent working on that advice, and this shall be communicated in the form of minutes or hours, against which there shall be an hourly rate, unless a flat percentage rate has been agreed as referred to in paragraph 2.*

Article 13e

Risk management

- 1. The investment product manufacturer shall employ a risk-management process which enables it to monitor and measure at any time the risk profile of the investment product.*

It shall employ a process for accurate and independent assessment of the value of OTC derivatives.

It shall communicate to the competent authorities of its home Member State regularly in regard to the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each product.

- 2. The investment product manufacturer shall ensure that the investment product's global exposure relating to derivative instruments does not exceed the investment product's total value.*

The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions.

When transferable securities or money market instruments embed a derivative, the derivative shall be taken into account when complying with the requirements of this Article.

- 3. The calculation of the value-at-risk should be carried out in accordance with the following parameters:*

(a) a one-tailed confidence interval of 99 %;

(b) a holding period equivalent to one month (20 business days); and

(c) an effective observation period (history) of risk factors of at least three years (750 business days) unless a shorter observation period is justified by a significant increase in price volatility (e.g. due to extreme market conditions).

- 4. The ESAs shall develop draft regulatory standards to determine:*

- (a) *guidelines on risk measurement and the calculation of global exposure of the investment products sold to retail investors;*
- (b) *guidelines on financial indices.*

The ESAs shall submit those draft regulatory technical standards to the Commission by [...].

Power is conferred on 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, of Regulation 1094/2010 and of Regulation (EU) No 1095/2010.

Article 13f

Payoff rules

1. *The payoff of an investment product shall not:*
 - (a) *include a number of mechanisms, events or asset classes creating a risk of misinterpretation;*
 - (b) *be conditional upon the occurrence of events uncommon for retail investors, such as the level of regulatory capital of a financial institution; or*
 - (c) *include packaging features playing on the behavioural biases of retail investors.*
2. *The ESAs shall develop guidelines providing further guidance on the conditions referred to in paragraph 1.*

CHAPTER III COMPLAINTS, REDRESS, COOPERATION

Article 14

The investment product manufacturer *and the person selling the investment product* shall establish appropriate procedures and arrangements which ensure that:

- (a) *retail investors have an effective way of submitting a complaint against the investment product manufacturer and hence a redress procedure;*

- (b) retail investors who have submitted a complaint in relation to the key information document *or the annex 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 investment product manufacturer is located in another Member State or in a third country.*

Article 15

1. *In accordance with the Directive on alternative dispute resolution for consumer disputes [2011/0373(COD)] and the Regulation on online disputes resolution for consumer disputes [2011/0374(COD)], Member States shall ensure that* where a retail investor initiates a procedure for alternative dispute resolution laid down in national law against an investment product manufacturer or a person selling investment products with regard to a dispute concerning rights and obligations established under this Regulation, the investment product manufacturer or the person selling investment products shall participate in that procedure *where*:
 - (a) the procedure results in decisions which *may be binding for the investment product manufacturer and the person selling the investment product*;
 - (b) the limitation period for bringing the dispute before a court is suspended for the duration of the procedure for alternative dispute resolution;
 - (c) the period of prescription of the claim is suspended for the duration of the procedure;
 - (d) the procedure is free of charge or *available for a nominal fee*, as specified in national legislation.

■

- 1a. *Member States shall ensure that where alternative dispute resolution entities are permitted to establish pre-specified monetary thresholds in order to limit the access to alternative dispute resolution procedures, the thresholds should not be set at a level, where they significantly impair the consumers' access to complaint handling by alternative dispute resolution entities.*

2. Member States shall notify the Commission of the entities with competence to deal with the procedures referred to in paragraph 1 by [insert concrete date 6 months after entry into force/application of this Regulation]. They shall notify the Commission without delay of any subsequent change concerning those entities.
3. Entities with competence to deal with the procedures referred to in paragraph 1 shall cooperate with each other on the resolution of cross-border disputes arising under this Regulation.

Article 15a

Information about alternative dispute resolutions

1. *Member States shall ensure that investment product manufacturer or a person selling investment product inform the retail investor about the alternative dispute resolution entities by which they are covered and which are competent to deal with potential disputes between themselves and the retail investor. They shall also specify whether or not they commit or are obliged to use these entities to resolve disputes with retail investors.*
2. *The information referred to in paragraph 1 shall be mentioned in a clear, comprehensible and easily accessible way on the traders' website, where one exists, and if applicable in the general terms and conditions of sales or service contracts between the trader and a consumer.*
3. *Member States shall ensure that, in cases where a dispute between a retail investor and a investment product manufacturer or a person selling investment product in their territory could not be settled further to a complaint submitted directly by the retail investor to the investment product manufacturer or at person selling investment product, the latter provide to the retail investor information referred to in paragraph 1, specifying whether he will make use of the relevant alternative dispute resolution entities to settle the dispute. That information shall be provided on paper or another durable medium.*

Article 15b

Collective alternative disputes resolutions

Member States may maintain or introduce alternative disputes resolution procedures dealing jointly with identical or similar disputes between a manufacturer and a person selling investment products and several retail investors. Alternative disputes resolutions systems for both individual and collective disputes and redress are complementary and not mutually exclusive procedures.

Article 16

For the purposes of the application of this Regulation the competent authorities shall cooperate with each other and with the entities responsible for out-of-court complaint and redress procedures referred to in Article 15.

In particular, the competent authorities shall, without undue delay, provide each other with such information as is relevant for the purposes of carrying out their duties 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. Member States shall lay down rules establishing appropriate administrative *penalties* and *other* measures to be applied 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 *penalties and other* measures shall be effective, proportionate and dissuasive.

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 *ESAs*. They shall notify the Commission and the Joint Committee of the *ESAs* without delay of any subsequent amendment thereto.

2. **█** Competent authorities shall *have, in accordance with national law, all supervisory powers, including investigatory powers, available to them as necessary to fulfil their duties under this Regulation*

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

Article 19

1. This Article applies to *any* breaches *of this Regulation*.

█

2. Member States shall ensure that the competent authorities have the power to impose at least the following administrative *penalties and other administrative* measures **█** :

- (a) an order prohibiting the marketing of an investment product;
- (b) an order suspending the marketing of an investment product;
- (c) a warning, which is made public and which identifies the person responsible and the nature of the breach;
- (d) an order for the publication of a new version of a key information document;
- (da) *in the case of a legal person, administrative fines of up to 10% of the total annual turnover of that legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year;*
- (db) *in the case of a natural person, administrative fines of up to EUR 5 000 000, or in a Member States where the euro is not the official currency, the corresponding*

value in the national currency on ... [the date of entry into force of 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 the investment product manufacturer or person selling the investment product to issue a direct communication to the retail investor concerned, giving them information about the administrative **penalty or other** measure ■, and informing them where to lodge complaints or submit claims for redress.

Article 20

The competent authorities shall apply the administrative measures **penalties and other measures** referred to in Article 19(2) taking into account all relevant circumstances including:

- (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;
- (ea) all measures taken by the responsible person to prevent any repetition of the breach in the future;**
- (eb) any compensation provided to retail investors by the responsible person following the breach.**

Article 21

1. Where the competent authority has disclosed administrative **penalties and other** measures ■ to the public, it shall simultaneously report those administrative **penalties and other** measures ■ to **the ESAs**.

2. The Member States shall once a year provide *the competent ESA* with aggregate information regarding *the* administrative **■** *penalties and other measures* imposed in accordance with Articles 18 and 19(2).
3. *The ESAs* shall publish this information in an annual report.

Article 22

Penalties and *other* measures imposed for the breaches referred to in Article 19(1) shall be disclosed to the public without undue delay including at least information on the type of breach of this Regulation and the identity of those responsible for it **■**. *Competent authorities may withhold the identity of the entity subject to administrative penalties or other measures on their website after no less than five years.*

■

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(5), Article 10(2) ■, Article 12(4), Article 13a(10) and Article 13b(9)* shall be conferred on the Commission for a period of [*two* 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. The delegation of powers referred to in *Article 8(5), Article 10(2) ■, Article 12(4), Article 13a(10) and Article 13b(9)* may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. 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 2 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 [*two months*] at the initiative of the European Parliament or the Council.
- 5a. *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 23a

Further provisions for draft regulatory technical standards

1. *Notwithstanding any time limit provided for the submission of draft regulatory technical standards to the Commission, phasing of submissions shall be agreed which shall specify texts or groups of texts due for submission 12, 18 and 24 months in advance.*
2. *The Commission shall not adopt regulatory technical standards in a manner that, in times of recess, reduces the scrutiny time of the European Parliament, including any extension, to less than two months.*
3. *The ESAs may consult the European Parliament during the drafting stages of the regulatory technical standards, particularly where there are concerns regarding the scope of this Regulation.*

4. *Where the competent committee of the European Parliament has rejected regulatory technical standards and there is less than two weeks until the start of the following plenary session, the European Parliament may further extend the period for objection referred to in Article 23(5a) to the date of the plenary session after the following one.*
5. *In the event of a rejection of a regulatory technical standard and where the identified issues are of limited scope, the Commission may adopt an accelerated timetable for delivering revised drafts.*
6. *The Commission shall ensure that all queries of the European Parliament's scrutiny team raised formally via the Chair of the competent committee shall be answered promptly before the adoption of the draft regulatory technical standard.*

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 **three** years after the entry into force].
- 1a. *AIFMs as defined in Article 4(1)(b) of Directive 2011/61/EU of the European Parliament and of the Council¹, and persons selling units of AIFs as defined in Article 4(1)(a) of that Directive, shall be exempt from the obligations under this Regulation until ...* [OJ: please insert the date three years after the date of entry into force of this Regulation] provided that they provide a key investor information document pursuant to national law in accordance with Article 78 of Directive 2009/65/EC or relevant provisions of national law.*

¹ *Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p. 1).*

Article 25

1. By ...* [Four years after the date of entry into force of this Regulation], the Commission shall review this Regulation. The review shall include a general survey of the practical application of the rules laid down in this Regulation, taking due account of developments in the market for retail investment products █ . The review shall also reflect on a possible extension of the scope of this Regulation to other ***new or innovative*** financial products ***distributed in the Union***.
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.
- 2a ***From ...* [OJ please insert the date of entry into force of this Regulation], investment manufacturers shall produce the key information document in accordance with this Regulation and shall be exempt from submitting a summary of a prospectus under Article 5(2) of Directive 2003/71/EC.***

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