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NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee

Subject: Retail Investment Strategy:

- Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document

- Mandate for negotiations with the European Parliament: legal text

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) A core objective of the Capital Markets Union (CMU) is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. To be able to do so, consumers must be supported by a regulatory framework that empowers them to take investment decisions that correspond to their needs and aims and adequately protects them in the single market. The package of measures under the EU Retail investment strategy seeks to address the identified shortcomings, including those in the area of information available to retail investors.

(2) Article 4, point (1), of Regulation (EU) No 1286/2014 defines packaged retail investment products or 'PRIIPs' as investments where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets that are not directly purchased by the retail investor. The ability for the manufacturer to redeem the investment early by triggering a make-whole clause should not in itself be considered as such a fluctuation. That fact should be reflected in the definition of PRIIPs.

(3) In the case PRIIPs offer the retail investor a range of options for investments, the information on those various options may be contained in different documents. That makes it difficult for retail investors interested in purchasing such PRIIPs to identify the total costs of the PRIIPs. It is therefore necessary to provide retail investors with tools, including simulation tools, to access and compare the total costs of such PRIIPs before they select one particular investment option. More detailed rules on the use of these tools should ensure better visibility of the total costs of these products while allowing a certain degree of flexibility when using simulation tools.

(4) Retail investors increasingly seek information on the sustainability performance of investment products, including PRIIPs. Recent Union legislative acts have introduced several disclosure obligations that could be leveraged to inform retail investors, in particular Regulation (EU) 2019/2088 of the European Parliament and of the Council¹ and Regulation (EU) 2020/852 of the European Parliament and of the Council². Such disclosures may, however, not be sufficiently visible to retail investors. It is therefore necessary to add certain information about the sustainability profile of PRIIPs to the key information document. To avoid additional reporting costs, that ESG information should be taken from the disclosures provided by product manufacturers pursuant to Regulation (EU) 2019/2088 and Regulation (EU) 2020/852.

¹ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

² Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

(5) Increased digitalisation provides opportunities to present key features of PRIIPs in a more attractive way. Regulation (EU) No 1286/2014 does not, however, provide sufficient flexibility for the use of digital means for displaying key information to investors. Presenting information from PRIIPs key information documents in a layered way would reduce the visual overload of retail investors and facilitate their understanding of the PRIIP concerned. It is therefore necessary to introduce more flexibility in the use of the electronic format so that investors can fully benefit from the potential offered by the provision of a key information document in an electronic format. Retail investors should be informed where they can download the complete key information document.

(6) The European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority (the ‘ESAs’) should develop the draft regulatory technical standards as regards the content of the dashboards and the principles for the use of layering and digital options using an electronic format. The Commission should adopt those draft regulatory technical standards, or further amend them, by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010³, (EU) 1094/2010⁴ and Regulation (EU) 1095/2010 of the European Parliament and of the Council⁵.

³ 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁴ 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁵ 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(7) To ensure that retail investors make an informed investment decision at all times, the key information document should be kept up to date for PRIIPs open to new subscriptions or that can be purchased on a secondary market. Keeping the key information document updated should be without prejudice to the fact that manufacturers should comply with the pre-contractual information contained in the key information document provided to retail investors before their investment.

(7a) Regulation (EU) No 1286/2014 applies to all products that qualify as a PRIIP according to Chapter 1 of Regulation (EU) No 1286/2014. When assessing whether a product falls within the scope of Regulation (EU) No 1286/2014, the sector or industry to which the manufacturer belongs is irrelevant. This means that products manufactured by non-financial companies and which qualify as a PRIIP according to Chapter 1 of Regulation No 1286/2014 fall within the scope of the said Regulation.

(7b) Pension products, that consist of immediate annuities and do not have an accumulation phase are not meant to fall under the scope of Regulation (EU) No 1286/2014, as they are not considered as investment products. Annuities are regulated by Directive 2009/138/EC and may therefore only be offered by insurance undertakings in accordance with that Directive. To fall under the new exclusion from Regulation (EU) No 1286/2014, a product should consist of annuities in accordance with Directive 2009/138/EC and those annuities should be immediately payable, without being preceded by an accumulation phase during which the amounts paid by the investors are invested to generate a return.

(7c) The key information document is meant to be a concise document. A three-page limit has been set in Regulation (EU) No 1286/2014 in order to achieve this goal. This Regulation requires two new sections to be included in the key information document. At the same time, the key information document should remain clear and easy to read. This entails streamlining the content and presentation of the key information document in such a way as to avoid any non-essential or redundant information.

(7d) For PRIIPs offering a range of options for investment, given that the information documents relating to the investment products backing the underlying investment options supplements the information contained in key information document of the PRIIP, those documents should also be submitted to the relevant collection body.

(8) Regulation (EU) No 1286/2014 should therefore be amended accordingly.

(9) Sufficient time needs to be provided to European Supervisory Authorities to draft specifications for key elements of the amended rules and for the PRIIPs manufacturers to familiarise themselves with these specifications. Therefore, the date application of this Regulation should be deferred.

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 1286/2014

Regulation (EU) 1286/2014 is amended as follows:

(1) Article 2(2) is amended as follows:

(a) point (d) is replaced by the following:

‘(d) securities as referred to in Article 1(2), points (b) to (f) of Regulation (EU) 2017/1129 of the European Parliament and the Council(*);

* Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).;’

(b) the following point (h) is added:

‘(h) pension products that consist of annuities, as referred to in Article 2(3), subparagraph a, point (ii) of Directive 2009/138/EC, which are immediate and do not have an accumulation phase.’;

(2) in Article 3, paragraph 1 is replaced by the following:

‘1. Where PRIIPs manufacturers subject to this Regulation are also subject to Regulation (EU) 2017/1129, this Regulation and Regulation (EU) 2017/1129 shall both apply.’;

(3) Article 4 is amended as follows:

(a) point (1) is replaced by the following:

(1) ‘packaged retail investment product’ or ‘PRIIP’ means an investment, including instruments issued by special purpose vehicles as defined in point (26) of Article 13 of Directive 2009/138/EC or securitisation special purpose entities as defined in point (an) of Article 4(1) of the Directive 2011/61/EU of the European Parliament and of the Council (**), where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor except if those fluctuations are only attributed to the inclusion of a make whole clause as defined in Article 4(1)(44a) of Directive 2014/65/EU.

** Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).’;

(b) The following point (7a) is inserted: ‘(7a) ‘electronic format’ means any durable medium other than paper.’;

(4) in Article 6 paragraph 3 is replaced by the following:

‘3. By way of derogation from paragraph 2, where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each investment option cannot be provided within a single, concise stand-alone document, the key information document shall provide at least a generic description of the underlying investment options, and the costs of the PRIIP other than the costs for the investment option, provided that:

(a) PRIIPs manufacturers provide investors with tools adapted to retail investors that facilitate research and comparison among the different investment options that they offer, including on costs of the underlying investment options and, where technically feasible, on (i) the total cost of the PRIIPs relating to those investment options, including the costs relating to the insurance contract, referred to under point (c) and (ii) the risks and performance;

(b) The tools referred to in point (a) contain a link to the pre-contractual information documentation relating to the investment products backing the underlying investment options;

(c) PRIIPs manufacturers provide investors with the total costs of the PRIIP relating to the investment options, including the costs relating to the insurance contract, in good time before retail investors are bound by any contract or offer to invest in a given investment option. This condition shall be also deemed satisfied when the total costs of the PRIIP relating to the investment options, including the costs relating to the insurance contract, are provided to the investor in an electronic format via the tools referred to in point (a).’;

(5) Article 8 is amended as follows:

(a) in paragraph 3, point (aa) is added:

‘(aa) under a section titled ‘Product at a glance’ a dashboard with summarised information about all of the following:

- (i) the type of the PRIIP, as referred to in point (c)(i);
- (ii) the summary risk indicator referred to in point (d)(i);
- (iii) the total costs of the PRIIP;
- (iv) the recommended holding period referred to in point (g)(ii);
- (v) whether the PRIIP offers the insurance benefits referred to in point (c) (iv);’;

(b) in paragraph 3, point (b) is deleted.

(c) in paragraph 3, point (c), point (ii) is replaced by the following:

‘(ii) the PRIIP’s financial objectives and the means for achieving those objectives, and in particular whether those objectives will be achieved by means of direct or indirect exposure to the underlying investment assets, including all of the following information:

- (1) a description of the underlying instruments or reference values;
- (2) a specification of the markets the PRIIP invests in;
- (3) information about how the return is determined;’;

(ca) in paragraph 3, point (d), point (iii) is replaced by the following:

‘(iii) appropriate information on performance and, where relevant, the assumptions made to produce them;’;

(d) the following point (ga) is inserted:

‘(ga) for PRIIPs on which financial market participants are to disclose pre-contractual information pursuant to Regulation (EU) 2019/2088 of the European Parliament and of the Council(***) and Commission Delegated Regulation 2022/1288(****), under a section titled ‘How sustainable is this product?’, the following information:

(i) where relevant, the minimum proportion of the investment of the PRIIP that is associated with economic activities that qualify as environmentally sustainable in accordance with Articles 5 and 6 of Regulation (EU) 2020/852 of the European Parliament and of the Council(*****);

(ii) a link to specific information disclosures made in accordance with Commission Delegated Regulation 2022/1288.

By way of derogation from the first subparagraph, point (ga), where a PRIIP offers the retail investor a range of options for investments, the key information document which provides a generic description of the underlying options, as referred to in Article 6(3), shall contain a statement that indicates that information on sustainability can be found in the pre-contractual information documentation relating to the investment products backing the underlying investment option.’;

*** Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

**** Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports (OJ L 196, 25.7.2022, p. 1).

***** Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).’;

(e) Paragraph 4 is deleted.

(fa) In paragraph 5, the first subparagraph is replaced by the following:

‘5. In order to ensure consistent application of this Article and Article 6(3), after conducting consumer testing, the ESAs shall, through the Joint Committee of the European Supervisory Authorities (‘Joint Committee’), develop draft regulatory technical standards specifying:’

(fb) In paragraph 5, point (d) is added:

‘(d) the minimum requirements for implementing the derogation in paragraph (3) of Article 6.’

(fc) In paragraph 5, the second subparagraph the following sentence is added:

‘Where appropriate in order to provide fair, clear and not misleading information to retail investors, different approaches may be taken between different types of products.’

(fd) In paragraph 5, the third subparagraph is replaced by the following:

‘When developing the draft regulatory technical standards, the ESAs shall assess the circumstances under which it is technically feasible to include (i) the total costs of the PRIIP relating to the investment option, including the costs relating to the insurance contract; and (ii) the risk and performance information in the tool referred to in point (a) of Article 6(3), paying due regard to the implementation costs for companies. This assessment shall also cover cases of risk and performance information relating to the combination of different underlying investment options. Based on their conclusions, the ESAs shall specify in the draft regulatory technical standards when the inclusion of the total cost and of the risk and performance in the tool is considered as technically feasible. Where the ESAs conclude that technical feasibility is limited or implementation costs disproportionate, they may propose a simplification of calculation or other technical parameters that would allow to display the level of total cost, the risks and performance.

When developing the draft regulatory technical standards, the ESAs shall specify to which specific information disclosures defined in Commission Delegated Regulation 2022/1288 a link should be inserted in the section “How sustainable is this product?” in accordance with paragraph 3, point (ga). In addition, the ESAs shall specify in which case the information referred to in paragraph 3(ga)(i) of this Article is considered relevant.

When developing the draft regulatory technical standards, the ESAs shall ensure that the appropriate information on performance is adequately comparable across different types of PRIIPs. Information on performance in the form of performance scenarios and presented in the KID for all types of PRIIPs could, if considered relevant for certain types of PRIIPs, be combined with information on performance in the form of past performance. Such an approach shall be implemented in a way that prioritises the clarity and simplicity that is required when presenting key information to the investor. In particular, the draft regulatory standards should avoid an overload of information and, where relevant, the investor should easily understand how performance scenarios and past performance relate to each other.’;

(fe) In paragraph 5, the following new subparagraph is inserted before the fourth subparagraph:

‘The ESAs shall submit those draft regulatory technical standards to the Commission by ... [PO please insert the date = one year after the date of entry into force of this amending Regulation].’;

(6) In Article 10, paragraph 1 the following sentence is added:

‘The requirement to review and revise the key information document shall cease to apply where the PRIIP is no longer open to new subscriptions and cannot be purchased on a secondary market.’;

(7) Article 14 is replaced by the following:

‘Article 14

1. The person advising on, or selling, a PRIIP shall provide the key information document to retail investors free of charge. The information shall be provided in an electronic format, unless the retail investor has requested to receive the key information document on paper. The person advising on, or selling a PRIIP shall inform the retail investors about their right to receive the key information document on paper free of charge.

2. The key information document may be presented in a layered format. In that case, the dashboard referred to in Article 8(3), point (aa) shall appear in the first layer.

3. The retail investor shall be notified electronically, or in paper form, of the address of the website, and the place on the website where the key information document can be accessed.

4. The key information document shall remain accessible on the website of the manufacturer, and shall remain capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it. Where the PRIIP manufacturer has revised the key information document as referred to in Article 10, the PRIIP manufacturer shall provide the retail investors with previous versions upon request.’;

(8) Article 30 is modified as follows:

In the second, third and fifth paragraph the words “in Article 8(4)” are deleted.

Article 2

Entry into force and application

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 [PO please insert the date = 24 months after the date of entry into force of this amending Regulation].

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

Done at Brussels,

For the European Parliament

The President

For the Council

The President