

Shearman & Sterling LLP has created this consolidated legislation to show the changes HM Treasury proposes to make to retained EU legislation to correct EU law deficiencies and ensure that it remains effective after Brexit.

Regulation (EU) No 1286/2014 of the European Parliament and of the Council

of 26 November 2014

on key information documents for packaged retail and insurance-based investment products (PRIIPs)

(Text with EEA relevance)

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

This Regulation lays down rules on the format and content of the key information document to be drawn up by PRIIP manufacturers before PRIIPs are made available to retail investors in the United Kingdom and on the provision of the key information document to retail investors in the United Kingdom in order to enable them to understand and compare the key features and risks of the PRIIP.

Article 2

1. [This Regulation applies to—](#)
 - (a) [PRIIP manufacturers in relation to PRIIPs which are, or are to be, made available to retail investors in the United Kingdom; and](#)
 - (b) ~~This Regulation shall apply to PRIIP manufacturers and~~ persons advising on, or selling, PRIIPs.
2. This Regulation shall not apply to the following products:
 - (a) non-life insurance products as listed in Annex I to Directive 2009/138/EC;

- (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
- (c) deposits other than structured deposits as defined in point (4323) of Article 42(1) of ~~Directive 2014/65/EU~~the markets in financial instruments regulation;
- (d) non-equity securities (as defined in point (c) of Article 2(1) of Directive 2003/71/EC) issued by—
 - (i) the United Kingdom, any part of the United Kingdom, or a third country;
 - (ii) a local authority in the United Kingdom or one of the regional or local authorities of a third country;
 - (iii) a public international body of which the United Kingdom or a third country is a member; or
 - (iv) the Bank of England, the European Central Bank or the central bank of a third country;
- (da) shares in the capital of the Bank of England or of a central bank of a third country;
- (db) securities (as defined in point (a) of Article 2(1) of Directive 2003/71/EC) unconditionally and irrevocably guaranteed by—
 - (i) the United Kingdom, any part of the United Kingdom, or a third country; or
 - (ii) a local authority in the United Kingdom or one of the regional or local authorities of a third country;
- (dc) securities (as defined in point (a) of Article 2(1) of Directive 2003/71/EC) issued by associations with legal status or non-profit-making bodies recognised by the United Kingdom, any part of the United Kingdom, or a third country with a view to their obtaining the means necessary to achieve their non-profit-making objectives;
- (dd) non-equity securities (as defined in point (c) of Article 2(1) of Directive 2003/71/EC) issued in a continuous or repeated manner (as defined in point (l) of Article 2(1) of that Directive) by credit institutions (as defined in point (g) of Article 2(1) of that Directive) provided that these securities—
 - (i) are not subordinated, convertible or exchangeable;
 - (ii) do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument;
 - (iii) materialise reception of repayable deposits;

- (iv) are covered by the compensation scheme within the meaning of section 213(2) of FSMA or by a similar scheme in a third country;
- ~~(d)~~ ~~(de)~~ securities as referred to in points ~~(b)~~ ~~to~~ ~~(g)~~, (i) and (j) of Article 1(2) of Directive 2003/71/EC;
- (e) pension products which, under ~~national~~the law of the United Kingdom, any part of the United Kingdom, or a third country, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;
- (f) officially recognised occupational pension schemes within the scope of Directive 2003/41/EC of the European Parliament and of the Council¹ or Directive 2009/138/EC or as defined in section 1(1) of the Pension Schemes Act 1993;
- (g) individual pension products for which a financial contribution from the employer is required by ~~national~~the law of the United Kingdom, any part of the United Kingdom, or a third country and where the employer or the employee has no choice as to the pension product or provider.

Article 3

1. Where PRIIP manufacturers subject to this Regulation are also subject to the provisions of FSMA and any rules or regulations made under FSMA which were relied on immediately before exit day to implement Directive 2003/71/EC, both this Regulation and ~~Directive 2003/71/EC shall both~~those provisions apply.
2. Where PRIIP manufacturers subject to this Regulation are also subject to the provisions of FSMA and any rules or regulations made under FSMA which were relied on immediately before exit day to implement Directive 2009/138/EC, both this Regulation and ~~Directive 2009/138/EC shall both~~those provisions apply.

Article 4

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

- (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 Council², where, regardless of the legal form of the investment, the

¹ Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

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;

- (2) 'insurance-based investment product' means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations;
- (3) 'packaged retail and insurance-based investment product' or 'PRIIP' means a product that is one or both of the following:
 - (a) a PRIP;
 - (b) an insurance-based investment product;
- (4) 'packaged retail and insurance-based investment product manufacturer' or 'PRIIP manufacturer' means:
 - (a) any entity that manufactures PRIIPs;
 - (b) any entity that makes changes to an existing PRIIP including, but not limited to, altering its risk and reward profile or the costs associated with an investment in a PRIIP;
- (5) 'selling a PRIIP' means—
 - (a) offering a PRIIP contract to a retail investor in the United Kingdom; or
 - (b) concluding a PRIIP contract with a retail investor in the United Kingdom;
- ~~(5A) 'person selling~~advising on a PRIIP' means ~~a person offering or concluding a PRIIP contract with~~advising a retail investor in the United Kingdom on a PRIIP;
- (6) 'retail investor' means:
 - (a) a ~~retail~~-client (as defined in point (417) of Article 42(1) of Directive 2014/65/EU the markets in financial instruments regulation) who is not a professional client;
 - (b) a customer, where that customer would not qualify as a professional client;
- (6A) 'customer' means a customer within the meaning of the provisions of FSMA and any rules or regulations made under FSMA which were relied on immediately before exit day to implement Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution;
- ~~(b6B) a customer within the meaning of Directive 2002/92/EC, where that customer would not qualify as~~'professional client' means a professional client as defined in point (408) of Article 42(1) of ~~Directive 2014/65/EU~~the markets in financial instruments regulation;

- (7) 'durable medium' means a durable medium as defined in point (m) of Article 2(1) of Directive 2009/65/EC;
- (8) 'FCA' means the Financial Conduct Authority;
- (9) 'third country' means a country or territory outside the United Kingdom;
- ~~(8) 'competent authorities' means the national authorities designated by a Member State to supervise the requirements this Regulation places on PRIIP manufacturers and the persons advising on, or selling, the PRIIP.~~
- (10) 'FSMA' means the Financial Services and Markets Act 2000;
- (11) 'the markets in financial instruments regulation' means Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;
- (12) In this Regulation, a reference to a provision of rules made under FSMA is a reference to that provision as it has effect on exit day.

CHAPTER II

KEY INFORMATION DOCUMENT

SECTION I

Drawing up the key information document

Article 5

1. Before a PRIIP is made available to retail investors in the United Kingdom, the PRIIP manufacturer shall draw up for that product a key information document in accordance with the requirements of this Regulation and shall publish the document on its website.
- ~~2. Any Member State may require the ex ante notification of the key information document by the PRIIP manufacturer or the person selling a PRIIP to the competent authority for PRIIPs marketed in that Member State.~~
2. [deleted]

SECTION II

Form and content of the key information document

Article 6

1. The key information document shall constitute pre-contractual information. It shall be accurate, fair, clear and not misleading. It shall provide key information and shall

be consistent with any binding contractual documents, with the relevant parts of the offer documents and with the terms and conditions of the PRIIP.

2. The key information document shall be a stand-alone document, clearly separate from marketing materials. It shall not contain cross- references to marketing material. It may contain cross-references to other documents including a prospectus where applicable, and only where the cross-reference is related to the information required to be included in the key information document by this Regulation.
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 underlying 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 state where and how more detailed pre-contractual information documentation relating to the investment products backing the underlying investment options can be found.
4. The key information document shall be drawn up as a short document written in a concise manner and of a maximum of three sides of A4-sized paper when printed, which promotes comparability. It shall:
 - (a) be presented and laid out in a way that is easy to read, using characters of readable size;
 - (b) focus on the key information that retail investors need;
 - (c) be clearly expressed and written in language and a style that communicate in a way that facilitates the understanding of the information, in particular, in language that is clear, succinct and comprehensible.
5. 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.
6. Where the corporate branding or logo of the PRIIP manufacturer or the group to which it belongs is used in the key information document, it shall not distract the retail investor from the information contained in the document or obscure the text.

Article 7

1. The key information document ~~shall~~must be written in ~~the official languages, or in one of the official languages, used in the part of the Member State where the PRIIP is distributed, or in another language accepted by the competent authorities of that Member State~~English, or where it has been written in a different language, it ~~shall~~must be translated into ~~one of these languages~~English.

The translation shall faithfully and accurately reflect the content of the original key information document.

~~2. If a PRIIP is promoted in a Member State through marketing documents written in one or more official languages of that Member State, the key information document shall at least be written in the corresponding official languages.~~

2. [deleted]

Article 8

1. The title 'Key Information Document' shall appear prominently at the top of the first page of the key information document.

The key information document shall be presented in the sequence laid down in paragraphs 2 and 3.

2. An explanatory statement shall appear directly underneath the title of the key information document. It shall read:

'This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.'

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

- (a) at the beginning of the document, the name of the PRIIP, the identity and contact details of the PRIIP manufacturer, ~~information about the competent authority of the PRIIP manufacturer~~ and the date of the document;
- (b) where applicable, a comprehension alert which shall read: 'You are about to purchase a product that is not simple and may be difficult to understand.';
- (c) under a section titled 'What is this product?', the nature and main features of the PRIIP, including:
 - (i) the type of the PRIIP;
 - (ii) its objectives and the means for achieving them, in particular whether the objectives are achieved by means of direct or indirect exposure to the underlying investment assets, including a description of the underlying instruments or reference values, including a specification of the markets the PRIIP invests in, including, where applicable, specific environmental or social objectives targeted by the product, as well as how the return is determined;
 - (iii) a description of the type of retail investor to whom the PRIIP is intended to be marketed, in particular in terms of the ability to bear investment loss and the investment horizon;
 - (iv) where the PRIIP offers insurance benefits, details of those insurance benefits, including the circumstances that would trigger them;

- (v) the term of the PRIIP, if known;
- (d) under a section titled ‘What are the risks and what could I get in return?’, a brief description of the risk-reward profile comprising the following elements:
 - (i) a summary risk indicator, supplemented by a narrative explanation of that indicator, its main limitations and a narrative explanation of the risks which are materially relevant to the PRIIP and which are not adequately captured by the summary risk indicator;
 - (ii) the possible maximum loss of invested capital, including, information on:
 - (A) whether the retail investor can lose all invested capital, or
 - (B) whether the retail investor bears the risk of incurring additional financial commitments or obligations, including contingent liabilities in addition to the capital invested in the PRIIP, and
 - (C) where applicable, whether the PRIIP includes capital protection against market risk, and the details of its cover and limitations, in particular with respect to the timing of when it applies;
 - (iii) appropriate performance scenarios, and the assumptions made to produce them;
 - (iv) where applicable, information on conditions for returns to retail investors or built-in performance caps;
 - (v) a statement that the tax legislation of the ~~retail investor’s home Member State~~United Kingdom may have an impact on the actual payout;
- (e) under a section titled ‘What happens if [the name of the PRIIP manufacturer] is unable to pay out?’, a brief description of whether the related loss is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not;
- (f) under a section titled ‘What are the costs?’, the costs associated with an investment in the PRIIP, comprising both direct and indirect costs to be borne by the retail investor, including one-off and recurring costs, presented by means of summary indicators of these costs and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment.

The key information document shall include a clear indication that advisors, distributors or any other person advising on, or selling, the PRIIP will provide information detailing any cost of distribution that is not already included in the costs

specified above, so as to enable the retail investor to understand the cumulative effect that these aggregate costs have on the return of the investment;

- (g) under a section titled ‘How long should I hold it and can I take money out early?’
 - (i) where applicable, whether there is a cooling off period or cancellation period for the PRIIP;
 - (ii) an indication of the recommended and, where applicable, required minimum holding period;
 - (iii) the ability to make, and the conditions for, any disinvestments before maturity, including all applicable fees and penalties, having regard to the risk and reward profile of the PRIIP and the market evolution it targets;
 - (iv) information about the potential consequences of cashing in before the end of the term or recommended holding period, such as the loss of capital protection or additional contingent fees;
- (h) under a section titled ‘How can I complain?’, information about how and to whom a retail investor can make a complaint about the product or the conduct of the PRIIP manufacturer or a person advising on, or selling, the product;
- (i) under a section titled ‘Other relevant information’, a brief indication of any additional information documents to be provided to the retail investor at the pre-contractual and/or the post-contractual stage, excluding any marketing material.

4. The ~~Commission shall be empowered to adopt delegated acts in accordance with Article 30 specifying~~ Treasury may by Regulations specify the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives.

5. In order to ensure consistent application of this Article, the ~~ESAs shall, through the Joint Committee of the European Supervisory Authorities (‘Joint Committee’), develop draft regulatory~~ FCA may make technical standards in accordance with Chapter 2A of Part 9A of FSMA (‘technical standards’) specifying:

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

When ~~developing the draft regulatory~~making technical standards, the ~~ESAs shall~~FCA must take into account the various types of PRIIPs, the differences between them and the capabilities of retail investors as well as the features of the PRIIPs so as to allow the retail investor to select between different underlying investments or other options provided for by the product, including where this selection can be undertaken at different points in time, or changed in the future.

~~The ESAs shall submit those draft regulatory technical standards to the Commission by 31 March 2016.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.~~

Article 9

Marketing communications that contain specific information relating to the PRIIP shall not include any statement that contradicts the information contained in the key information document or diminishes the significance of the key information document. Marketing communications shall indicate that a key information document is available and supply information on how and from where to obtain it, including the PRIIP manufacturer's website.

Article 10

1. The PRIIP manufacturer shall review the information contained in the key information document regularly and shall revise the document where the review indicates that changes need to be made. The revised version shall be made available promptly.
2. In order to ensure consistent application of this Article, the ~~ESAs shall, through the Joint Committee, develop draft regulatory~~FCA may make technical standards in accordance with Chapter 2A of Part 9A of FSMA specifying:
 - (a) the conditions for reviewing the information contained in the key information document;
 - (b) the conditions under which the key information document must be revised;
 - (c) the specific conditions under which information contained in the key information document must be reviewed or the key information document revised where a PRIIP is made available to retail investors in a non-continuous manner;
 - (d) the circumstances in which retail investors are to be informed about a revised key information document for a PRIIP purchased by them, as well as the means by which the retail investors are to be informed.

~~The ESAs shall submit those draft regulatory technical standards to the Commission by 31 December 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.~~

Article 11

1. The PRIIP manufacturer shall not incur civil liability solely on the basis of the key information document, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the requirements laid down in Article 8.
2. A retail investor who demonstrates loss resulting from reliance on a key information document under the circumstances referred to in paragraph 1, when making an investment into the PRIIP for which that key information document was produced, may claim damages from the PRIIP manufacturer for that loss in accordance with ~~national~~the law of the United Kingdom or any part of the United Kingdom.
3. Elements such as 'loss' or 'damages' as referred to in paragraph 2 of this Article which are not defined shall be interpreted and applied in accordance with the applicable national law as determined by the relevant rules of private international law.
4. This Article does not exclude further civil liability claims in accordance with ~~national~~the law of the United Kingdom or any part of the United Kingdom.
5. The obligations under this Article shall not be limited or waived by contractual clauses.

Article 12

Where the key information document concerns an insurance contract, the insurance undertakings' obligations under this Regulation are only towards the policyholder of the insurance contract and not towards the beneficiary of the insurance contract.

SECTION III

Provision of the key information document

Article 13

1. A person advising on, or selling, a PRIIP shall provide retail investors with the key information document in good time before those retail investors are bound by any contract or offer relating to that PRIIP.
2. A person advising on, or selling, a PRIIP may satisfy the requirements of paragraph 1 by providing the key information document to a person with written authority to

make investment decisions on behalf of the retail investor in respect of transactions concluded under that written authority.

3. By way of derogation from paragraph 1 and subject to [the provisions of FSMA and any rules or regulations made under FSMA which were relied on immediately before exit day to implement](#) Article 3(1), point (a) of Article 3(3) and Article 6 of Directive 2002/65/EC, a person selling a PRIIP may provide the retail investor with the key information document after conclusion of the transaction, without undue delay, where all of the following conditions are met:
 - (a) the retail investor chooses, on his own initiative, to contact the person selling a PRIIP and conclude the transaction using a means of distance communication;
 - (b) provision of the key information document in accordance with paragraph 1 of this Article is not possible;
 - (c) the person advising on or selling the PRIIP has informed the retail investor that provision of the key information document is not possible and has clearly stated that the retail investor may delay the transaction in order to receive and read the key information document before concluding the transaction;
 - (d) the retail investor consents to receiving the key information document without undue delay after conclusion of the transaction, rather than delaying the transaction in order to receive the document in advance.
4. Where successive transactions regarding the same PRIIP are carried out on behalf of a retail investor in accordance with instructions given by that retail investor to the person selling the PRIIP prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall apply only to the first transaction, and to the first transaction after the key information document has been revised in accordance with Article 10.
5. In order to ensure consistent application of this Article, the ~~ESAs shall, through the Joint Committee, develop draft regulatory~~[FCA may make](#) technical standards [in accordance with Chapter 2A of Part 9A of FSMA](#) specifying the conditions for fulfilling the requirement to provide the key information document as laid down in paragraph 1.

~~The ESAs shall submit those draft regulatory technical standards to the Commission by 31 December 2015.~~

~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.~~

Article 14

1. The person advising on, or selling, a PRIIP shall provide the key information document to retail investors free of charge.
2. The person advising on, or selling, a PRIIP shall provide the key information document to the retail investor in one of the following media:
 - (a) on paper, which should be the default option where the PRIIP is offered on a face-to-face basis, unless the retail investor requests otherwise;
 - (b) using a durable medium other than paper, where the conditions laid down in paragraph 4 are met; or
 - (c) by means of a website where the conditions laid down in paragraph 5 are met.
3. Where the key information document is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to retail investors upon request and free of charge. Retail investors shall be informed about their right to request a paper copy free of charge.
4. The key information document may be provided using a durable medium other than paper if the following conditions are met:
 - (a) the use of the durable medium is appropriate in the context of the business conducted between the person advising on, or selling, a PRIIP and the retail investor; and
 - (b) the retail investor has been given the choice between information on paper and in the durable medium, and has chosen that other medium in a way that can be evidenced.
5. The key information document may be provided by the means of a website that does not meet the definition of a durable medium if all of the following conditions are met:
 - (a) the provision of the key information document by means of a website is appropriate in the context of the business conducted between the person advising on, or selling, a PRIIP and the retail investor;
 - (b) the retail investor has been given the choice between information provided on paper and by means of a website and has chosen the latter in a way that can be evidenced;
 - (c) the retail investor has been notified electronically, or in written form, of the address of the website, and the place on the website where the key information document can be accessed;

- (d) the key information document remains accessible on the website, capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it.

Where the key information document has been revised in accordance with Article 10, previous versions shall also be provided on request of the retail investor.

6. For the purposes of paragraphs 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 advising on or selling a PRIIP and the retail investor if there is evidence that the retail investor has regular access to the internet. The provision by the retail investor of an email address for the purposes of that business shall be regarded as such evidence.

CHAPTER III

MARKET MONITORING AND PRODUCT INTERVENTION POWERS

Article 15

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

~~1. [\[deleted\]](#)~~

2. ~~Competent authorities~~[The FCA](#) shall monitor the market for insurance-based investment products which are marketed, distributed or sold in or from ~~their Member State~~[the United Kingdom](#).

Article 16

~~[\[deleted\]](#)~~

~~1. In accordance with Article 9(5) of Regulation (EU) No 1094/2010, EIOPA may, where the conditions in paragraphs 2 and 3 of this Article are fulfilled, temporarily prohibit or restrict in the Union:~~

~~(a) the marketing, distribution or sale of certain insurance-based investment products or insurance-based investment products with certain specified features; or~~

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

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

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

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

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

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

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

~~3. When taking action under this Article, EIOPA shall ensure that the action does not:~~

~~(a) have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action; or~~

~~(b) create a risk of regulatory arbitrage.~~

~~Where a competent authority or competent authorities have taken a measure under Article 17, EIOPA may take any of the measures referred to in paragraph 1 of this Article without issuing the opinion provided for in Article 18.~~

~~4. Before deciding to take any action under this Article, EIOPA shall notify competent authorities of the action it proposes.~~

~~5. EIOPA shall publish on its website notice of any decision to take any action under this Article. The notice shall specify details of the prohibition or restriction and specify a time after the publication of the notice from which the measures will take effect. A prohibition or restriction shall only apply to action taken after the measures take effect.~~

~~6. EIOPA shall review a prohibition or restriction imposed under paragraph 1 at appropriate intervals and at least every three months. If the prohibition or restriction is not renewed after that three-month period it shall expire.~~

~~7. Action adopted by EIOPA under this Article shall prevail over any previous action taken by a competent authority.~~

~~8. The Commission shall adopt delegated acts in accordance with Article 30 specifying criteria and factors to be taken into account by EIOPA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union referred to in point (a) of the first subparagraph of paragraph 2.~~

~~Those criteria and factors shall include:~~

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

Article 17

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

2. ~~A competent authority~~The FCA may take the action referred to in paragraph 1 if it is satisfied on reasonable grounds that:
 - (a) an insurance-based investment product, or activity or practice gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of financial markets or the stability of whole or part of the financial system within ~~at least one Member State~~the United Kingdom;
 - (b) existing regulatory requirements under ~~Union~~the law of the United Kingdom, or any part of the United Kingdom, applicable to the insurance-based investment product, or activity or practice do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements;
 - (c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the insurance-based investment product, or activity or practice;
 - (d) [deleted]
 - (e) [deleted]
 - ~~(d) the competent authority has properly consulted competent authorities in other Member States that may be significantly affected by the action; and~~
 - ~~(e) the action does not have a discriminatory effect on services or activities provided from another Member State.~~

Where the conditions set out in the first subparagraph are fulfilled, the ~~competent authority~~FCA may impose the prohibition or restriction referred to in paragraph 1 on a precautionary basis before an insurance-based investment product has been marketed or sold to investors. A prohibition or restriction may apply in circumstances, or be subject to exceptions, specified by the ~~competent authority~~FCA.

3. The ~~competent authority shall~~FCA must not impose a prohibition or restriction under this Article unless, ~~not less than~~at least one month before the measure is intended to take effect, ~~it has notified all other competent authorities involved and EIOPA in writing or through another medium agreed between the authorities of the details of:~~the FCA has published details of its decision to impose the measure on its website in accordance with paragraph 5.

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

~~(b) the precise nature of the proposed prohibition or restriction and when it is intended to take effect; and~~

~~(c) the evidence upon which it has based its decision and upon which it is satisfied that each of the conditions in paragraph 2 are met.~~

4. In exceptional cases where the ~~competent authority~~FCA deems it necessary to take urgent action under this Article in order to prevent detriment arising from the insurance-based investment products, activities or practices referred to in paragraph 1, the ~~competent authority~~FCA may take action on a provisional basis ~~with no less than 24 hours' written notice before the measure is intended to take effect to all other competent authorities and EIOPA,~~ provided that all the criteria in this Article are met and that, in addition, it is clearly established that ~~a one month notification period~~delaying the action for one month would not adequately address the specific concern or threat. The ~~competent authority~~FCA shall not take action on a provisional basis for a period exceeding three months.

5. The ~~competent authority~~FCA shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 1. That 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 2 are met. The prohibition or restriction shall only apply in relation to action taken after the publication of the notice.

6. The ~~competent authority~~FCA shall revoke a prohibition or restriction if the conditions in paragraph 2 no longer apply.

7. The ~~Commission shall adopt delegated acts in accordance with Article 30 specifying~~Treasury may by Regulations specify criteria and factors to be taken into account by ~~competent authorities~~the FCA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system within ~~at least one~~

~~Member State referred to in point (a) of the first subparagraph of paragraph 2~~[the United Kingdom](#).

Those criteria and factors ~~shall~~[may](#) include:

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

Article 18

~~_____~~[\[deleted\]](#)

~~1. EIOPA shall perform a facilitation and coordination role in relation to action taken by competent authorities under Article 17. In particular EIOPA shall ensure that action taken by a competent authority is justified and proportionate and that, where appropriate, a consistent approach is taken by competent authorities.~~

~~2. After receiving notification under Article 17 of any action that is to be imposed under that Article, EIOPA shall adopt an opinion on whether the prohibition or restriction is justified and proportionate. If EIOPA considers that the taking of a measure by other competent authorities is necessary to address the risk, it shall state this in its opinion. The opinion shall be published on EIOPA's website.~~

~~3. Where a competent authority proposes to take, or takes, action contrary to an opinion adopted by EIOPA under paragraph 2 or declines to take action contrary to such an opinion, it shall immediately publish on its website a notice fully explaining its reasons for so doing.~~

CHAPTER IV

COMPLAINTS, REDRESS, COOPERATION AND SUPERVISION

Article 19

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

- (a) retail investors have an effective way of submitting a complaint against the PRIIP manufacturer;
- (b) retail investors who have submitted a complaint in relation to the key information document receive a substantive reply in a timely and proper manner; and

- (c) effective redress procedures are also available to retail investors in the event of cross-border disputes, in particular where the PRIIP manufacturer is located in ~~another Member State or in~~ a third country.

Article 20

~~_____ [deleted]~~

- ~~1. For the purposes of the application of this Regulation the competent authorities shall cooperate with each other and, without undue delay, provide each other with such information as is relevant for the purposes of carrying out their duties under this Regulation and of making use of their powers.~~
- ~~2. Competent authorities shall, in accordance with national law, have all supervisory and investigatory powers that are necessary for the exercise of their functions under this Regulation.~~

Article 21

~~Nothing in this Regulation is to be taken as authorising a disclosure of personal data in contravention of Regulation (EU) No 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data or of the Data Protection Act 2018.~~

- ~~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 shall apply to the processing of personal data carried out by the ESAs.~~

CHAPTER V

ADMINISTRATIVE PENALTIES AND OTHER MEASURES

Article 22

~~_____ [deleted]~~

- ~~1. Without prejudice to the supervisory powers of competent authorities and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules establishing appropriate administrative sanctions and measures applicable to situations which constitute an infringement of this Regulation and shall take all necessary measures to ensure that they are implemented. Those sanctions and measures shall be effective, proportionate and dissuasive.~~

~~Member States may decide not to lay down rules for administrative sanctions as referred to in the first subparagraph for infringements which are subject to criminal sanctions under their national law.~~

~~By 31 December 2016 the Member States shall notify the rules referred to in the first subparagraph to the Commission and to the Joint Committee. They shall notify~~

~~the Commission and the Joint Committee without delay of any subsequent amendment thereto.~~

~~2. In the exercise of their powers in Article 24, competent authorities shall cooperate closely to ensure that the administrative sanctions and measures produce the results pursued by this Regulation and coordinate their action in order to avoid possible duplication and overlap when applying administrative sanctions and measures to cross-border cases.~~

Article 23

~~[deleted]~~

~~Competent authorities shall exercise their powers to impose sanctions in accordance with this Regulation and national law in any of the following ways:~~

- ~~(a) directly;~~
- ~~(b) in collaboration with other authorities;~~
- ~~(c) under their responsibility by delegation to such authorities;~~
- ~~(d) by application to the competent judicial authorities.~~

Article 24

~~[deleted]~~

~~1. This Article applies to infringements of Article 5(1), Articles 6 and 7, Article 8(1) to (3), Article 9, Article 10(1), Article 13(1), (3) and (4) and Articles 14 and 19.~~

~~2. The competent authorities shall have the power to impose, in accordance with national law, at least the following administrative sanctions and measures:~~

- ~~(a) an order prohibiting the marketing of a PRIIP;~~
- ~~(b) an order suspending the marketing of a PRIIP;~~
- ~~(c) a public warning which indicates the person responsible for, and the nature of, the infringement;~~
- ~~(d) an order prohibiting the provision of a key information document which does not comply with the requirement of Articles 6, 7, 8 or 10 and requiring the publication of a new version of a key information document;~~
- ~~(e) administrative fines of at least:
 - ~~(i) in the case of a legal entity:~~~~

~~(A) up to EUR 5 000 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 December 2014, or up to 3 % of the total~~

~~annual turnover of that legal entity according to the last available financial statements approved by the management body, or~~

~~(B) up to twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;~~

~~(ii) in the case of a natural person:~~

~~(A) up to EUR 700 000, or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 30 December 2014, or~~

~~(B) up to twice the amount of the profits gained or losses avoided because of the infringement where those can be determined.~~

~~Where the legal entity referred to in point (e)(i) of the first subparagraph is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial statements according to Directive 2013/34/EU of the European Parliament and of the Council³, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated financial statements approved by the management body of the ultimate parent undertaking.~~

~~3. Member States may provide for additional sanctions or measures and for higher levels of administrative fines than those provided for in this Regulation.~~

~~4. Where the competent authorities have imposed one or more administrative penalties or measures in accordance with paragraph 2, the competent authorities shall have the power to issue or require the PRIIP manufacturer or person advising on, or selling, the PRIIP to issue a direct communication to the retail investor concerned, giving them information about the administrative sanction or measure, and informing them where to lodge complaints or submit claims for redress.~~

Article 25

~~[deleted]~~

~~The competent authorities shall apply the administrative sanctions and measures referred to in Article 24(2) taking into account all relevant circumstances including, where appropriate:~~

~~(a) the gravity and the duration of the infringement;~~

³- ~~Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).~~

- ~~(b) the degree of responsibility of the person responsible for the infringement;~~
- ~~(c) the impact of the infringement on retail investors' interests;~~
- ~~(d) the cooperative behaviour of the person responsible for the infringement;~~
- ~~(e) any previous infringements by the person responsible for the infringement;~~
- ~~(f) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.~~

Article 26

~~Decisions to impose sanctions and measures taken pursuant to this Regulation shall be subject to a right of appeal.~~

~~[deleted]~~

Article 27

~~[deleted]~~

- ~~1. Where the competent authority has disclosed administrative sanctions or measures to the public, it shall simultaneously report those administrative sanctions or measures to the competent ESA.~~
- ~~2. The competent authority shall, on an annual basis, provide the competent ESA with aggregate information regarding all administrative sanctions and measures imposed in accordance with Article 22 and Article 24(2).~~
- ~~3. The ESAs shall publish the information referred to in this Article in their annual reports.~~

Article 28

~~[deleted]~~

- ~~1. Competent authorities shall establish effective mechanisms to enable reporting of actual or potential infringements of this Regulation to them.~~
- ~~2. The mechanisms referred to in paragraph 1 shall include at least:
 - ~~(a) specific procedures for the receipt of reports of actual or potential infringements and their follow-up;~~
 - ~~(b) appropriate protection for employees who report infringements committed within their employer at least against retaliation, discrimination and other types of unfair treatment;~~
 - ~~(c) protection of the identity both of the person who reports the infringements and the natural person who is allegedly responsible for an infringement, at all~~~~

~~stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent judicial proceedings.~~

~~3. Member States may provide for competent authorities to establish additional mechanisms under national law.~~

~~4. Member States may require employers engaged in activities that are regulated for financial services purposes to have in place appropriate procedures for their employees to report actual or potential infringements internally through a specific, independent and autonomous channel.~~

Article 29

1. A decision, against which there is no appeal, imposing an administrative sanction or measure for infringements ~~referred to in Article 24(1)~~of Articles 5(1), 6, 7, 8(1), (2) or (3), 9, 10(1), 13(1), (3) or (4), 14 or 19 shall be published by ~~competent authorities on their~~the FCA on its official website without undue delay after the person on whom the sanction or measure was imposed has been informed of that decision.

The publication shall include at least the following information:

- (a) the type and nature of the infringement;
- (b) the identity of the persons responsible.

That obligation does not apply to decisions imposing measures that are of an investigatory nature.

Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the ~~competent authority~~FCA to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise the stability of financial markets or an ongoing investigation, the ~~competent authorities shall~~FCA must:

- (a) delay the publication of the decision to impose a sanction or a measure until the moment where the reasons for non-publication cease to exist;
- (b) publish the decision to impose a sanction or a measure on an anonymous basis in a manner which complies with ~~national~~the law of the United Kingdom or any part of the United Kingdom, if such anonymous publication ensures an effective protection of the personal data concerned; or
- (c) not publish the decision to impose a sanction or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:
 - (i) that the stability of financial markets would not be put in jeopardy;

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

~~2. Competent authorities shall inform the ESAs of all administrative sanctions or measures imposed but not published in accordance with point (c) of the third subparagraph of paragraph 1 including any appeal in relation thereto and the outcome thereof.~~

2. In the case of a decision to publish a sanction or measure on an anonymous basis the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.

3. Where ~~national~~the law of the United Kingdom or any part of the United Kingdom provides for the publication of the decision to impose a sanction or measure which is subject to an appeal before the relevant judicial or other authorities, the ~~competent authorities~~FCA shall publish on ~~their~~the FCA's official website, without undue delay, such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a sanction or a measure which has been published shall also be published.

4. ~~Competent authorities~~The FCA shall ensure that any publication, in accordance with this Article, shall remain on ~~their~~the FCA's official website for a period of at least five years after its publication. Personal data contained in the publication shall be kept on the FCA's official website ~~of the competent authority~~ only for the period which is necessary in accordance with the applicable data protection rules.

CHAPTER VI

FINAL PROVISIONS

Article 30

1. ~~The~~Any power to ~~adopt delegated acts is~~make regulations conferred on the ~~Commission subject to the conditions laid down in this Article~~Treasury by this Regulation is exercisable by statutory instrument.

~~2. The power to adopt delegated acts referred to in Article 8(4), Article 16(8) and Article 17(7) shall be conferred on the Commission for a period of three years from 30 December 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the three year period. 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 power referred to in Article 8(4), Article 16(8) and Article 17(7) may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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.~~

2. Such regulations may—
 - (a) contain incidental, supplemental, consequential and transitional provision; and
 - (b) make different provision for different purposes.
3. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

~~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(4), Article 16(8) or Article 17(7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.~~

Article 31

~~Where the Commission adopts regulatory technical standards pursuant to Article 8(5), Article 10(2) or Article 13(5) which are the same as the draft regulatory technical standards submitted by the ESAs, the period during which the European Parliament and the Council may object to those regulatory technical standards shall, by way of derogation from the second subparagraph of Article 13(1) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, and in order to take into account the complexity and volume of the issues covered therein, be two months from the date of notification. At the initiative of the European Parliament or the Council that period may be extended by one month.~~

~~_____ [deleted]~~

Article 32

- ~~1. Management companies as defined in Article 2(1)(b) of Directive 2009/65/EC, investment companies as referred to in Article 27 thereof and persons advising on, or selling, units of UCITS as referred to in Article 1(2) thereof shall be exempt from the obligations under this Regulation until 31 December 2019.~~

1. The following are exempt from the obligations under this Regulation until 31 December 2019—
 - (a) the management company (as defined in section 237(2) of FSMA) of a UK UCITS;
 - (b) the management company (as defined in point (b) of Article 2(1) of Directive 2009/65/EC) of an EEA UCITS;

- (c) an authorised open-ended investment company (as defined in section 237(3) of FSMA) which is a UK UCITS;
 - (d) an investment company referred to in Article 27 of Directive 2009/65/EC;
 - (e) a person advising on, or selling, units of UK UCITS or EEA UCITS in the United Kingdom.
2. When ~~a Member State~~the United Kingdom applies rules on the format and content of the key information document, as laid down in the provisions of FSMA and any rules or regulations made under FSMA which were relied on immediately before exit day to implement Articles 78 to 81 of Directive 2009/65/EC, to non-UCITS funds offered to retail investors in the United Kingdom, the exemption laid down in paragraph 1 of this Article shall apply to management companies, investment companies and persons advising on, or selling, units of such funds to retail investors in the United Kingdom.
3. In this Article, ‘UK UCITS’ and ‘EEA UCITS’ have the meanings given in section 237(3) of FSMA.

Article 33

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- ~~1. By 31 December 2018, the Commission shall review this Regulation. The review shall include, on the basis of the information received by the ESAs, a general survey of the operation of the comprehension alert, taking into account any guidance developed by competent authorities in this respect. It shall also include a survey of the practical application of the rules laid down in this Regulation, taking due account of developments in the market for retail investment products and the feasibility, costs and possible benefits of introducing a label for social and environmental investments. As part of its review, the Commission shall undertake consumer testing and an examination of non-legislative options as well as the outcomes of the review of Regulation (EU) No 346/2013 regarding points (c), (e) and (g) of Article 27(1) thereof.~~

~~As regards UCITS as defined in Article 1(2) of Directive 2009/65/EC, the review shall assess whether the transitional arrangements under Article 32 of this Regulation shall be prolonged, or whether, following the identification of any necessary adjustments, the provisions on key investor information in Directive 2009/65/EC might be replaced by or considered equivalent to the key investor document under this Regulation. The review shall also reflect on a possible extension of the scope of this Regulation to other financial products, and shall assess whether the exemption of products from the scope of this Regulation should be maintained, in view of sound standards for consumer protection including comparisons between financial products. The review shall also assess the appropriateness of introducing common rules on the need for all Member States to provide for administrative sanctions for infringements of this Regulation.~~

- ~~2. The Commission shall assess, by 31 December 2018, on the basis of the work undertaken by EIOPA on disclosure of product information requirements, whether~~

~~to propose a new legislative act guaranteeing appropriate disclosure of product information requirements for those products or whether to include pension products referred to in point (e) of Article 2 (2) in the scope of this Regulation.~~

~~In making its assessment, the Commission shall ensure that such measures do not reduce standards of disclosure in Member States that have pre-existing disclosure regimes for such pension products.~~

~~3. After consulting the Joint Committee, the Commission shall submit a report to the European Parliament and to the Council relating to paragraphs 1 and 2, accompanied, if appropriate, by a legislative proposal.~~

~~4. By 31 December 2018, the Commission shall conduct a market survey to determine whether online calculator tools which allow the retail investor to compute the aggregate costs and fees of PRIIPs are available and whether they are free of charge. The Commission shall report on whether those tools provide for reliable and accurate calculations for all products within the scope of this Regulation.~~

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

Article 34

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 1 January 2018.

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

Summary report:	
Litéra® Change-Pro TDC 7.5.0.185 Document comparison done on 01/02/2019 13:57:08	
Style name: Shearman & Sterling	
Intelligent Table Comparison: Active	
Original DMS: dm://LNDOCS01/1120308/1	
Modified DMS: dm://LNDOCS01/1120308/2	
Changes:	
Add	182
Delete	262
Move From	1
Move To	1
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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