



EUROPEAN COMMISSION

Strasbourg, 3.7.2012
COM(2012) 352 final

2012/0169 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on key information documents for investment products

(Text with EEA relevance)

{SWD(2012) 187 final}

{SWD(2012) 188 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

This proposal is about improving transparency in the investment market for retail investors.

Retail investment products – which include investment funds, retail structured products and certain types of insurance contracts used for investment purposes – are essential for meeting the needs of EU citizens for products with which to build up savings and investments, whilst also contributing to efficient capital markets that help fund EU economic growth.

However, asymmetries of information about investment products exist between retail investors and those designing such products and seeking to sell them to these investors. Retail investors are not thereby well equipped in protecting their own best interests. Such investors often face confusing and overly-complex information about possible investments, where risks and costs of products are difficult to assess or compare. This undermines the efficiency of the investment markets, leading to higher prices for investors. It also contributes directly to the purchase of unsuitable products by retail investors, leading to detriment to these investors either through unexpected costs or losses, missed opportunities, or, in the worst case, through the loss of life savings with a dramatic impact on individual and family wellbeing.

Existing disclosures vary according to the legal form a product takes, rather than its economic nature or the risks it raises for retail investors. The comparability, comprehensibility and presentation of information vary, so the average investor can struggle to make necessary comparisons between products. Indeed, product disclosures are often focused more on reducing legal risks for the manufacturer rather than providing effective, open and balanced communication to potential customers about the product in a form that the customer is likely to understand and use. Information – other than marketing – is typically overly lengthy and does not sufficiently highlight key points or information.

The importance of addressing these issues has been underlined by the financial crisis. Retail investors have lost money with investments that carried risks that were not transparent or understood by those investors. In addition, retail investment products including retail structured products or insurance contracts for investment purposes often have been and continue to be marketed to retail investors as substitutes for simple products such as savings accounts although retail investors do not necessarily understand the differences. This is in a context where investor confidence has collapsed: a recent survey of consumers across the EU showed they trust the financial services less than all other industry sectors.

Rebuilding confidence on a sound basis is vital. Improving provisions on transparency so that they work in favour of retail investors, taking into account their needs is a vital component of this.

The EU has already taken innovative steps through the development of the UCITS 'key investor information' document (UCITS KIID). It was developed in a new way, on the basis of robust testing of disclosure approaches with retail investors themselves, to shorten, streamline and focus information provided to the greatest extent possible and ensure the information is comprehensible for the average retail investor.

While disclosures for UCITS have therefore already been improved, those for the wider range of retail investment products have not. The task now is to address all such products: European retail investors should always receive short, comparable and standardised disclosures, termed 'key information documents' or KIDs in this explanatory memorandum, whatever the investment product they are considering.

The genesis of this proposal for an EU-wide KID is a request from the ECOFIN Council in May 2007 for the European Commission to examine the coherence of EU law applying to different types of retail investment products.

A first stage of work culminated in the adoption by the Commission in April 2009 of a Communication on Packaged Retail Investment Products (PRIPs). The Commission concluded in the Communication that a sustainable and satisfactory regulatory environment for the sale and disclosures of retail investment products can only be established through legislative change at the European level, since a lack of effective rules at the European level underpinned inconsistencies in practices across sectors. The Communication noted two areas of further work: rules applying to sales, and rules on product disclosures. This proposal stems from the latter work stream on product disclosures.

The proposal takes the form of a Regulation, which will be supported by detailed delegated/implementing acts. This Regulation sets the overall principles on the approach and content. The proposed delegated/implementing acts would standardise the presentation of the information required by this Regulation as far as possible, however they would adapt measures as necessary for the specific features of other retail investment products and their differing risk profiles, to ensure that retail customers always receive the key information they need to take informed decisions. These detailed measures will ultimately form a package with the proposed Regulation. They will have an impact on the overall costs which are related to the introduction of the KID and so options for these detailed measures will themselves be subject to a thorough impact assessment.

This proposal forms part of a wider legislative package dedicated to rebuilding consumer trust in financial markets. The package has two other parts. The first is an extensive overhaul of the Insurance Mediation Directive 2002/92/EC (IMD) to ensure that customers benefit from a high level of protection when buying insurance products. The final part of the package aims at strengthening the function of the depositary for UCITS – a key building block for investor protection provided for by the UCITS Directive. To ensure the continued effectiveness of this building block, targeted amendments are proposed to Directive 2009/65/EC.

The measures on product disclosure proposed in this Regulation in particular complement investor protection measures on investment advice and sales services. As far as the sales of structured deposits are concerned these have been addressed by the proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC.¹ The revision of the IMD will specifically deal with the improvement of the sales rules for investment insurance products.

¹ COM(2011) 656 final.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The initiative is the result of an extensive dialogue and consultation with all interested stakeholders.

There have been two phases of such consultations: the first followed the Council request and preceded the publication of the Commission Communication in 2009. It included a written call for evidence in October 2007, a Feedback Statement in March 2008, a technical workshop was held with industry representatives in May 2008, and a high-level Open Hearing in July 2008. The second phase of consultation was more focussed on concrete elements of the work stream on disclosure, and followed the Communication: a further technical workshop was held in October 2009, and an Update on the work was published in December 2009.

In parallel to these efforts the three Level 3 Committees of national supervisors (CEBS, CEIOPS and CESR) worked together to develop their thinking on this subject. The first output was the joint submission to the Commission of three sectoral reports on 18 November 2009. Recognising the cross-sectoral nature of this workstream, a joint Level 3 Task Force on PRIPs was established in 2009 and one year later it submitted to the Commission its Final Report.

The Commission launched a public consultation on concrete options in November 2010. The Commission received around 140 contributions which have been published on the Commission website. Responses to this consultation showed support across industry, consumer and Member State stakeholders for the initiative and the broad approach proposed. Differences of view focused mostly on the calibration of the scope of the regime, and the extent to which the UCITS key investor information approach might be copied for other retail investments.

These consultations have been supplemented by a series of discussions with consumer representatives (FIN-USE, Financial Services Consumer Group, and Financial Services User Group), regulators (Financial Services Committee, European Securities Committee, European Insurance and Occupational Pensions Committee) and industry representatives.

This proposal builds on the work undertaken by the three Level 3 Committees (CEBS, CEIOPS and CESR²); opinions expressed during consultations, including workshops, meetings with stakeholders, as well as on the experience with the key investor information regime which has been developed for UCITS.

In line with its "Better Regulation" policy, the Commission prepared an impact assessment of policy alternatives. Policy options related to the scope of the new regime, level of standardisation, who should be held responsible for producing of the disclosure, and how to ensure its effective provision to retail investors. A number of studies, including an innovative study focused on behavioural insights related to retail investors, supported this impact assessment work.

The draft impact assessment report was examined by the Impact Assessment Board, and revised in line with its positive opinion of 15 April 2011. Amongst other improvements, the

² CEBS, CEIOPS and CESR are the committees preceding EBA, EIOPA and ESMA respectively.

interaction between the proposal and other measures on investor protection, including those on selling practices was further clarified, the concrete scope of products and entities impacted by the proposal made clearer, the possible interaction of the proposals with other areas of Union law clarified further, the analysis of options deepened and extended, and the cost and benefit estimates were more clearly adjusted to reflect steps already taken for UCITS. In addition, the analysis of the other factors relevant for investor decision making was deepened to reflect more explicitly that investor disclosures are only one such factor, and that the role of advisors or sellers can be predominant in determining or influencing investor choices in many practical sales environments.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

This proposal is based on Article 114 of the TFEU. It lays down uniform rules on investment product disclosures for retail investors. It aims to ensure that retail investors are able to understand the key features and risks of retail investment products and to compare the features of different products. At the same time it also aims to ensure a level playing field between different investment product manufacturers and those selling those products. It aims therefore to establish uniform conditions for the way investors in the Union are informed about investment products by the means of a short document and how the information is provided to them. This proposal therefore harmonises the operating conditions in relation to the information on investment products for all relevant players in the retail investment market, product manufacturers, persons selling and investors.

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. There is increasingly cross border trade in retail investment products, but divergent national approaches will lead to different levels of investor protection, increased costs and uncertainties for product providers and distributors which represent an impediment to the further cross-border development of the retail investment market. Such further development would also require easy comparisons between products of different types across the Union. Divergent standards to investor disclosure make such comparisons very difficult. Such different rules could obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market. Experience in the field of UCITS also suggests that different national approaches to disclosures can cause significant distortions of competition. Consequently, the appropriate legal basis is Article 114 TFEU.

It is considered appropriate and necessary for this proposal to take the form of a regulation, so that this initiative can serve its purpose. This measure is only dedicated to retail investor disclosures. It does not address other rights or obligations of product manufacturers, persons selling investment products or investors where a Directive might be the appropriate legal form. Experience has shown that if a product disclosure is to contain standardized information enabling investors to compare between different investment products, this can only be achieved by directly applicable provisions which do not require Member States to take any additional implementing measures. If requirements on the content and the form of disclosure diverged from one Member State to another as a result of the transposition of a Directive, it

would create an unlevel playing field for market participants and an uneven level of investor protection. It is important that this regulation impose direct obligations on private parties as regards the preparation or the provision of the disclosure and the scope of these obligations should not depend on national implementing measures.

3.2. Subsidiarity and proportionality

According to the principle of subsidiarity laid down in Article 5(3) of the TEU, action on the EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the EU.

The aims of this proposal, to ensure a level playing field across the EU among different product manufacturers and persons selling investment products and to establish a uniform level of investor protection by laying down harmonised rules on transparency cannot be achieved by action taken at Member State level. National approaches may have a beneficial impact with respect to investor protection within the Member States in question. But national approaches are by definition restricted to the relevant national territory. Furthermore, there is the risk of divergent approaches to investor disclosures. They cannot create a Union wide level playing field for investment product manufacturers and persons selling and an even level of investor protection in relation to investor disclosures across the EU. Therefore, action on the European level is needed.

In accordance with the principle of proportionality (Article 5(4) TEU), it is necessary and appropriate for the achievement of the objectives of this initiative to lay down principles relating to the content and form of the disclosure for retail investment products, as well as rules on drawing up and provision of these disclosures to retail investors. Such requirements should be further developed at level 2, so that a requisite level of consistency in measures can be achieved to facilitate comparisons between investment products that originated in different industry sectors.

3.3. Compliance with Articles 290 and 291 TFEU

Since 1st January 2011 the Regulations establishing the three European supervisory authorities EBA, EIOPA, and ESMA are applicable.³ In this respect the Commission wishes to recall the Statements in relation to Articles 290 and 291 TFEU it made at the adoption of the Regulations which took place on the 23rd September 2009 according to which: "As regards the process for the adoption of regulatory standards, the Commission emphasises the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognised in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with Articles 290 and 291 TFEU."

³ Regulation (EU) No.1093/2010, Regulation (EU) 1094/2010 and Regulation (EU) 1095/2010; OJ 15.12.2010, L 331, 12.

3.4. Detailed explanation of the proposal

3.4.1. *Investment products which should be accompanied by a KID when sold to retail investors*

Investment products can be manufactured to take different legal forms, so that the same investment proposition is offered across different industry sectors. This manufacturing can give the impression that the products are quite different, even where underlying economic purposes are similar (e.g. a fund, a deposit and a unit-linked insurance contract might look very different, but might be equally used to deliver the same investment proposition). All of these products seek to address a relatively simple need: capital accumulation that beats the risk-free rate. While these products vary in what they offer – some combine the prospect of capital accumulation with a capital guarantee, while others do not; some combine an investment element with another element (such as offering life insurance benefits) – they are all sold to retail investors when they approach financial intermediaries or product manufacturers directly for products that address capital accumulation needs.

Such investment products expose the investor to fluctuations in the market value of assets or in the payouts to be achieved from assets. But this exposure is not of the direct kind, as for instance when an investor buys specific assets themselves. Instead these products and those that manufacture them intercede between the investor and the markets, through a combination of wrapping of those assets, or other mechanisms that differ from a direct holding ("packaging"). Such mechanisms can include techniques such as pooling capital from multiple investors to enable collective investments, or engineering exposures through the use of derivative instruments. These techniques can create additional complexity, costs and opacity in relation to the product. They can also, however, allow for risk spreading and other benefits that would not be available to the investor on their own; they allow ordinary investors to participate in investment markets more efficiently, leading to deeper capital markets and better options for investors seeking to diversify their investment exposures. To capture all such products, the definition of investment products in this Regulation refers directly to this 'packaged' form. The Commission Communication of April 2009 referred specifically to *packaged* retail investment products, or PRIPs; following consultations, this Regulation operationalizes this focus on packaged investments through a reference to the indirectness of holdings of assets.

Such a definition would include products with capital guarantees, and those where, in addition to capital, a proportion of the return is also guaranteed; investment funds, whether closed-ended or open-ended including UCITS; all structured products, whatever their form (e.g. packaged as insurance policies, funds, securities or banking products), insurance products whose surrender values are determined indirectly by returns on the insurance companies own investments or even the profitability of the insurance company itself as well as derivative instruments. Some of these products may be used as individual retail pension products, i.e. accumulation vehicles for the purposes of retirement planning.

As a result of such a definition, the following products are not covered by this Regulation:

- products where the precise rate of return is set in advance for the entire life of the product, since here the amount payable is not subject to fluctuations in the values of other assets (there is no investment risk);

- plain shares and bonds, insofar as these do not contain a mechanism other than a direct holding of the relevant assets;
- deposits which are not 'structured', i.e. deposits which are determined by an interest rate such as e.g. EURIBOR or LIBOR;
- insurance products that only offer insurance benefits, such as pure protection insurance products or non-life insurance products, which provide no surrender value that is exposed to fluctuations in the performance of one or more underlying assets or reference values.
- occupational pension schemes covered by Directive 2003/41/EC or Directive 2009/138/EC.
- 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 pension product provider.

The mechanisms by which payouts are made would not be relevant for determining scope: products that yield an income, or provide a single pay out at maturity, or that adopt some other arrangement, would all be in scope in so far as they satisfy the general definition.

The definition does not include any reference to a product being intended for retail use, even though many investment products are designed with retail customers already in mind. This is due to the fact that the retail element may only be determined at the point of sale, when the distributor sells a certain investment product to a retail customer, or provides advice on it. However, the disclosure would need to be produced whenever a product that falls within scope is to be sold to retail investors.

3.4.2. Responsibility to produce the KID - Article 5

The proposal expressly allocates the responsibility for preparing the KID to the investment product manufacturer, within the meaning of the Regulation: which means a person who produces an investment product but also a person who has substantively changed the risk or cost structure of an existing investment product. (An entity combining other products would be a product manufacturer). This definition captures a situation where the original manufacturer of a particular financial product does not exercise control over the final product. Not every change to the original product triggers such a shift of responsibility. However, changes which significantly alter key features of the investment product such as its risk reward profile or its costs shall be considered as remanufacturing the product as clarified in Article 4. Delegation of the preparation of a part or the whole disclosure to third parties, such as may occur under collaboration with distributors, has no impact on the overall responsibility of the product manufacturer with regard to the KID.

3.4.3. Form and content of KID - Articles 6 to 11

This proposal introduces the principles of the UCITS KIID regime across all other retail investment products – all KIDs should have a standardized 'look and feel' and contents designed to keep them focused on key information presented in a common way, so as to promote comparability of information and its comprehension by retail investors.

The KID should be seen as an opportunity to communicate effectively with potential investors in a plain manner. Therefore the proposal provides clear indications in relation to its form and language: it must be a short document, written in a concise manner, in non-technical language that avoids jargon, so as to be understandable by the average or typical retail investor, drawn

up in a common format so that investors are able to easily compare between different investment products. The KID should be a stand-alone document in the sense that retail investors should not be required to read other documents to be able to understand the key features of the investment product and take an informed investment decision, and it should be clearly distinct from marketing materials.

The proposal specifies the essential elements of the investment product which should be described in the KID: the identity of the product and its manufacturer, the nature and the main features of the product, including whether the investor's might lose capital, its risk and reward profile, costs, and past performance as appropriate. Other information may be included for specific products, and information about possible future outcomes should be provided for private pension products. The proposal sets out a common format and sequence of sections to promote comparability. It is of central importance that the information included in the document is kept to a minimum, as otherwise the document will become too complicated for the retail investor. In order to maintain its short form, no other information should be included in the KID.

These requirements should be supported by delegated acts and supporting methodologies for calculating summary disclosures of risks and costs specified in technical standards. Such an approach would allow for a maximal level of consistency and comparability of disclosures consistent with the variety of products that fall under the scope of the regime. It is envisaged that additional supporting initiatives could substantially contribute to the success of this initiative, for instance, development of common glossaries of terms or sharing of best practices in use of plain language.

The proposal outlines in addition measures on keeping the KID up to date and on ensuring appropriate references in accompanying marketing information.

The proposal clarifies the liability of the investment product manufacturer on the basis of the KID and the burden of proof in this regard: it is for the product manufacturer to show that they have complied with the Regulation when a retail investor makes a claim.

3.4.4. Obligation to provide the KID – Articles 12 to 13

The proposal requires the KID to be provided to retail investors (rather than simply offered). Whoever is selling the product to retail investors (whether a distributor or the product manufacturer in case of direct sales) must provide the disclosure to the potential investor in good time before a sale is transacted. The timing of provision is vital; to be effective the document must be provided before an investment decision is taken. However, the proposed Regulation provides for some flexibility as regards the timing of provision for certain forms of distribution that are not face-to-face. Also, the proposal includes requirements on the media used for providing the KID to retail investors, including conditions designed to allow for media other than paper. These requirements aim to ensure the appropriateness of these media to the sale and the continued access of the retail investor to the information in the future. To achieve consistent outcomes, details of the method, timing and conditions for the provision of the disclosure to a retail investor will be clarified by delegated acts.

3.4.5. Complaints, redress and cooperation – Articles 14 to 17

This proposal includes measures to ensure effective complaints procedures both on the part of the investment product manufacturer and at the level of Member States. In addition, it includes measures to ensure effective access to dispute resolution procedures and redress.

The cross-sectoral character of this proposal, which includes banking, insurance, securities and fund products, requires enhanced and efficient co-operation between competent authorities in all sectors.

3.4.6. Administrative sanctions and measures – Articles 18 to 22

The Commission Communication on sanctions⁴ confirmed that 'ensuring proper application of EU rules is first and foremost the task of national authorities, who have the responsibility to prevent financial institutions from violating EU rules, and to sanction violations within their jurisdiction', but stressed at the same time the co-ordinated and integrated way in which national authorities should act.

In line with the Communication and following other initiatives at EU level in the financial sector, this proposal contains provisions on sanctions and measures aimed at introducing a harmonised approach to sanctions in order to ensure consistency. It is important that administrative sanctions and measures are applied where key provisions of this proposal are not complied with and that those sanctions and measures are effective, proportionate and dissuasive.

3.4.7. Transitional provision for UCITS and review clause – Articles 23 to 25

Given the recent introduction of the KIID for UCITS, it would not be proportionate to apply the KID requirements of this Regulation to UCITS at this stage. For this reason, a transitional provision is included to allow UCITS to continue to use the KIID in accordance with Directive 2009/65/EC for five years from the entry into force of this Regulation.

At that point, the Commission would be able to assess how UCITS should be treated and whether and if so how the existing UCITS KIID should be amended so as to achieve the greatest possible degree of comparability of information between UCITS and other investment products subject to the KID under this regulation. Other than identifying possible adjustments to the content of the UCITS KIID, several options are conceivable for delivering these adjustments in a proportionate way. One option would be to prolong the transitional arrangement of this Regulation, so that UCITS would continue to be only subject to the requirements in Directive 2009/65/EC – though these requirements could be adjusted to ensure comparability of information. Another option would be to amend Directive 2009/65/EC by repealing the provisions on the UCITS KIID, moving the substantive rules on the disclosure for UCITS to this Regulation. A final option would be to leave the substantive rules on the UCITS KIID in the UCITS framework, but to establish that this document is equivalent to the PRIPs KID under this Regulation. The assessment of options could include, where necessary, the identification of any changes to the KID in this Regulation that may be necessary.

This Regulation foresees a review of the effectiveness of its measures after four years. This is timed prior to the end of the transitional period just mentioned so that conclusions can already be drawn on the appropriate treatment of UCITS. The review should also consider whether or not the scope of the Regulation should be broadened further to cover new or innovative investment products being offered in the Union.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Reinforcing sanctioning regimes in the financial services sector", of 8 December 2010 (COM (2010) 716 final).

3.4.8. Interaction with other Union law targeting the provision of information to consumers

In relation to other disclosure requirements in Union law, it should be noted that the KID required under this Regulation is a new disclosure document which will be designed in a way which is exclusively tailored, in terms of its contents and design, to the needs of ordinary retail investors when considering and comparing different investment products prior to an investment. Its design and its purpose are therefore not fully identical with other disclosure requirements such as the summary under the Prospectus Directive or disclosure requirements under Solvency II. These disclosures seek to fulfil purposes in addition to the delivery of key information to retail investors, such as ensuring transparency towards financial markets or a full picture of all details in relation to a proposed contract. Therefore, the KID cannot easily replace these other requirements and will exist in parallel to these requirements. However, the experience with the requirements of this Regulation will show whether in practice the KID requirements should be further developed, for instance so as to replace certain disclosures required under other Union law.

In addition, the KID requirements exist in parallel to the requirements of the Directive on distance marketing of consumer financial services (DMFSD) and the e-commerce Directive. The requirements of the DMFSD are service related and the requirements of the e-commerce Directive are supplementary to other information requirements under Union law. Therefore, this Regulation will not impact those Directives.

4. BUDGETARY IMPLICATION

There are no implications for the EU budget in that no additional funding and no additional posts will be required to perform these tasks. The tasks envisaged for the European Supervisory Authorities fall within the scope of existing responsibilities for these Authorities, therefore the allocation of resources and staff foreseen in the approved Legislative Financial Statements for these Authorities will be sufficient to facilitate the execution of these tasks.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on key information documents for investment products

(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,⁵

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

Having regard to the opinion of the European Central Bank,⁶

Having regard to the opinion of the European Economic and Social Committee,⁷

After consulting the European Data Protection Supervisor,

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 often 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, and in comprehending their features. 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. First steps in this direction have been already been taken at Union level through the development of the key investor

⁵ OJ , , p. .

⁶ OJ , , p. .

⁷ OJ C , , p. .

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).⁸

- (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. 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. 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 in the Directive 2004/39/EC of the European Parliament and the Council.⁹ 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 Council.¹⁰
- (6) This Regulation should apply to all products 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 other than an interest rate. This should include such investment products as investment funds, life insurance policies with an investment element, and retail structured products. For these products, investments are not of a direct kind achieved when buying or holding assets themselves. Instead these products intercede between the investor and the markets through a process of "packaging", wrapping or bundling together assets so as to create

⁸ OJ L 302, 17.11.2009, p.32.

⁹ OJ L 145, 30.4.2004, p.1.

¹⁰ OJ L 9, 15.1.2003, p.3.

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.

- (7) In order to ensure this Regulation applies solely to such packaged investment products, insurance products that do not offer investment opportunities and products solely exposed to interest rates should thereby be excluded from the scope of the Regulation. Assets that would be held directly, such as corporate shares or sovereign bonds, are not packaged investment products, and should therefore be excluded. 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 schemes which fall under the scope of 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 provision¹¹ or Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II),¹² should not be subject to this Regulation. Similarly, certain occupational pension products which fall outside the scope of Directive 2003/41/EC 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 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 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 2001/34¹³ and Directive 2009/138/EC, it is necessary to establish that these Directives continue to apply in addition to this Regulation.
- (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. The document should be drawn up by the investment product manufacturer 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. 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.

¹¹ OJ L 235, 23.9.2003, p.10.

¹² OJ L 335, 17.12.2009, p.1.

¹³ OJ L 345, 21.12.2003, p. 64.

- (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 comprehensible for 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. Furthermore, retail investors should be able to understand the key information document on its own without referring to other information.
- (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 only contain key information, notably as regards the nature and features of the product, including whether it is possible to lose capital, the costs and risk profile of the product, 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.
- (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 calibrated to maximise understanding and 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 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. Those products should be taken into account when drawing up the format.
- (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 from any marketing communications. Its significance should not be diminished by those other documents.
- (15) In order to ensure that the key information document contains reliable information, this Regulation should require investment product manufacturers to keep the key information document 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 are laid down in a delegated act to be adopted by the Commission.

- (16) Key information documents are the foundation for investment decisions by retail investors. For this reason, investment product manufacturers 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. 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.
- (17) As retail investors in general do not have close insight as to the internal procedures of investment product manufacturers, a reversal of the burden of proof should be established. The product manufacturer would have to prove that the key information document was drawn up in compliance with this Regulation. However, it would be for the retail investor to demonstrate that his loss has occurred due to the use of the information in the key information document because this matter falls within the direct personal sphere of the retail investor.
- (18) Regarding matters concerning the civil liability of a investment product manufacturer and which are not covered by this regulation, such matters 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. This requirement should generally apply irrespective of where or how the transaction takes place. Persons selling include both distributors and the investment product manufacturer themselves where they choose to sell the product directly to retail investors. To ensure necessary flexibility and proportionality, retail investors who wish to conclude a transaction using a means of distance communication should be able to receive the key information document after the conclusion of the transaction. Even in this case the key information document would be useful for the investor, for instance to allow the investor to compare the product purchased with that described in the key information document. This Regulation is without prejudice to the Directive 2002/65/EC of the European Parliament and the Council.¹⁴
- (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

¹⁴ OJ L 271, 9.10.2002, p.16.

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, requirements should be established for appropriate internal procedures which ensure that retail investors receive a substantive response from the investment product manufacturer to complaints.
- (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 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.
- (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.
- (24) In line with the Commission Communication of December 2010 on reinforcing sanctioning regimes in the financial sector¹⁵ 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 normally be published, except in certain well defined circumstances.
- (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 during its preparatory work. The Commission, when 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

¹⁵ COM(2010)716.

underpinning the presentation of risk and reward and the calculation of costs 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.

- (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 data¹⁶ 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,¹⁷ governs the processing of personal data carried out by the European Supervisory Authorities 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 European Supervisory Authorities 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 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.
- (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' understanding of investment products 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.
- (31) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.

¹⁶ OJ L 281, 23.11.1995, p.31.

¹⁷ OJ L 8, 12.1.2001, p.1.

- (32) Since the objective of the action to be taken, namely to enhance retail investors' protection and improve their confidence in investment products, including where these products are sold cross-border, cannot be sufficiently achieved by the Member States acting independently of one another, and only action at the European level could address the identified weaknesses, and can therefore 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 those objectives,

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 by investment product manufacturers and uniform rules on the provision of this document to retail investors.

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 or where that surrender value is not wholly or partially exposed, directly or indirectly, to market fluctuations;
- (b) deposits with a rate of return that is determined in relation to an interest rate;
- (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;
- (e) occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC; and
- (f) 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 pension product provider.

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 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 an investment where regardless of the legal form of the investment the amount repayable to the investor is exposed to fluctuations in reference values or in the performance of one or more assets which are not directly purchased by the investor;
- (b) 'investment product manufacturer' means:
 - i) any natural or legal person who 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;
- (c) 'retail investors' means:
 - i) retail clients as defined in point (12) of Article 4(1) of Directive 2004/39/EC;
 - ii) customers within the meaning of Directive 2002/92/EC;
- (d) 'pension products' means products which under national law are recognised as having the primary purpose of providing the investor an income in retirement, and which entitles the 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 for each investment product it produces and shall publish the document on a website of its choice before the investment product can be sold to retail investors.

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.
2. The key information document shall be a stand-alone document, clearly separate from marketing materials.
3. The key information document shall be drawn up as a short document which is:
 - (a) presented and laid out in a way that is easy to read, using characters of readable size;
 - (b) clearly expressed and written in language that communicates in a way that facilitates the retail investor's understanding of the information being communicated, in particular where:
 - (i) the language used is clear, succinct and comprehensible;
 - (ii) the use of jargon is avoided;
 - (iii) technical terms are avoided when everyday words can be used instead.
4. Where colours are used in the key information document, they shall not diminish the comprehensibility of the information in the event that 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 language, or one of the official languages of the Member State where the investment product is sold, or in a 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 8

1. The title 'Key Information Document' shall appear prominently at the top of the first page of the key information document. An explanatory statement shall appear directly underneath the title. 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 of this investment product and the risks of investing in it. You are advised to read it so that you can take an informed decision about whether to invest.'

2. The key information document shall contain the following information:
 - (a) under a section at the beginning of the document, the name of the investment product and identity of the investment product manufacturer;
 - (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;
 - iii) an indication of whether the investment product manufacturer targets specific environmental, social or governance outcomes, either in respect of his conduct of business or in respect of the investment product, and if so, an indication of the outcomes being sought and how these are to be achieved;
 - iv) where the investment product offers insurance benefits, details of these insurance benefits;
 - v) the term of the investment product, if known;
 - vi) performance scenarios, if this is relevant having regard to the nature of the product;
 - (c) under a section titled "Could I lose money?", a brief indication of whether loss of capital is possible, including
 - i) any guarantees or capital protection provided, as well as any limitations to these;
 - ii) whether the investment product is covered by a compensation or guarantee scheme;

- (d) under a section titled "What is it for?" an indication of the recommended minimum holding period and the expected liquidity profile of the product including 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;
 - (e) under a section titled "What are the risks and what might I get back?", the risk and reward profile of the investment product, including a summary indicator of this profile and warnings in relation to any specific risks that may not be fully reflected in the summary indicator;
 - (f) under a section titled "What are the costs?", the costs associated with an investment in the investment product, comprising both direct and indirect costs to be borne by the investor, including summary indicators of these costs;
 - (g) under a section titled "How has it done in the past?", the past performance of the investment product, if this is relevant having regard to the nature of the product and the length of its track record;
 - (h) for pension products, under a section titled "What might I get when I retire?", projections of possible future outcomes.
3. The investment product manufacturer may only include other information where it is necessary for the retail investor to take an informed investment decision about a specific investment product.
 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. The key information document shall 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, the presentation and details of the other information the product manufacturer 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.
 6. The European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) shall develop draft regulatory standards to determine:
 - (a) the methodology underpinning the presentation of risk and reward as referred to in point (e) of paragraph 2 of this Article and
 - (b) the calculation of costs as referred to in point (f) of paragraph 2 of this Article.

The draft regulatory technical standards shall take into account the different types of investment products. The European Supervisory Authorities shall submit those draft regulatory technical standards to the Commission by [...].

Power is conferred on the Commission to adopt the regulatory technical standards 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 9

Marketing communications that contain specific information relating to the investment product 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 to obtain it.

Article 10

1. The investment product manufacturer shall review the information contained in the key information document regularly and revise the document where the review indicates that changes need to be made.
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, 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 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 in which retail investors are to be informed about a revised key information document for an investment product purchased by them.

Article 11

1. Where an investment product manufacturer has produced a key information document which does not comply with the requirements of Articles 6, 7 and 8 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.

2. When a retail investor demonstrates a loss resulting from the use of the information contained in the key information document, the investment product manufacturer has to prove that the key information document has been drawn up in compliance with Articles 6, 7 and 8 of this Regulation.
3. The distribution of the burden of proof referred to in paragraph 2 shall not be altered in advance through an agreement. Any clause in such agreements in advance shall not be binding on the retail investor.

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 in good time before the conclusion of a transaction relating to the investment product.
2. By way of derogation from paragraph 1, a person selling an investment product may provide the retail investor with the key information document immediately after the conclusion of the transaction where:
 - (a) the retail investor chooses to conclude the transaction using a means of distance communication where:
 - (b) the provision of the key information document in accordance with paragraph 1 is not possible, and
 - (c) where 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 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.
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 to retail investors free of charge.
2. The person selling an investment product shall provide the key information document to the retail investor in one of the following media:
 - (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 selling an investment 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 selling an investment product 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 all revised versions shall also be made available to the retail investor;
 - (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 III COMPLAINTS, REDRESS, COOPERATION

Article 14

The investment product manufacturer shall establish appropriate procedures and arrangements which ensure that retail investors who have submitted a complaint in relation to the key information document receive a substantive reply in a timely and proper manner.

Article 15

1. 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, provided that it fulfils the following requirements:
 - (a) the procedure results in decisions which are not binding;
 - (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 at moderate cost, as specified in national legislation;
 - (e) electronic means are not the only means by which the parties can gain access to the procedure;
 - (f) interim measures are possible in exceptional cases where the urgency of the situation so requires.
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 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 94/46/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 SANCTIONS AND MEASURES

Article 18

1. Member States shall lay down rules establishing appropriate administrative sanctions and 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 sanctions and 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 European Supervisory Authorities. They shall notify the Commission and the Joint Committee of the European Supervisory Authorities without delay of any subsequent amendment thereto.

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

Article 19

1. This Article applies to the following breaches:
 - (a) the key information document does not comply with Article 6 (1) to (3) and Article 7;
 - (b) the key information document does not contain the information set out in Article 8 (1) and (2) or is not presented in accordance with Article 8 (4);
 - (c) a marketing communication contains information relating to the investment product that contradicts the information in the key information document, in breach of Article 9;
 - (d) the key information document is not reviewed and revised in accordance with Article 10;
 - (e) the key information document has not been provided in good time in accordance with Article 12 (1);
 - (f) the key information document has not been provided free of charge in accordance with Article 13 (1).
2. Member States shall ensure that the competent authorities have the power to impose at least the following administrative measures and sanctions:
 - (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.
3. Member States shall ensure that, where the competent authorities have imposed one or more administrative measures and sanctions 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 measure or sanction, and informing them where to lodge complaints or submit claims for redress.

Article 20

The competent authorities shall apply the administrative measures and sanctions 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 person;

- (c) the impact of the breach on retail investors' interests;
- (d) the cooperative behaviour of the person responsible for the breach;
- (e) any previous breaches by the responsible person.

Article 21

1. Where the competent authority has disclosed administrative measures and sanctions to the public, it shall simultaneously report those administrative measures and sanctions to EBA, EIOPA and ESMA.
2. The Member States shall once a year provide EBA, EIOPA and ESMA with aggregate information regarding all administrative measures and sanctions imposed in accordance with Articles 18 and 19(2).
3. EBA, ESMA and EIOPA shall publish this information in an annual report.

Article 22

Sanctions and 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, unless such disclosure would seriously jeopardise the financial markets.

Where a publication would cause a disproportionate damage to the parties involved, the competent authorities shall publish the sanctions or measures on an anonymous basis.

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 Articles 8(5), 10(2) and 12(4) shall be conferred on the Commission for a period of [4 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 Articles 8(5), 10(2) and 12(4) 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 Articles 8(5), 10(2) and 12(4) 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 [2 months] at the initiative of the European Parliament or the Council.

Article 24

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 5 years after the entry into force].

Article 25

1. 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. As regards UCITS as defined in Article 1 (2) of Directive 2009/65/EC, the review shall assess whether the transitional arrangements under Article 24 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.
2. After consulting the Joint Committee of the European Supervisory Authorities, the Commission shall submit a report to the European Parliament and the Council, accompanied, if appropriate, by a legislative proposal.

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 [two years after its entry into force].

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

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President