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Committee on the Internal Market and Consumer Protection

2012/0169(COD)

15.5.2013

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Economic and Monetary Affairs

on the proposal for a regulation of the European Parliament and of the Council
on key information documents for investment products
(COM(2012)0352 – C7-0179/2012 – 2012/0169(COD))

Rapporteur: Pier Antonio Panzeri

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SHORT JUSTIFICATION

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.

The Commission is therefore correct in asserting that 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.

From a consumer protection point of view it should first be noted that for many people investment products is very complicated and therefore deserves protection. As a rule, people are aware of the implications of this transaction, seek out information and take advice.

The consumer's ability to take account of the specificities of his situation by means of individual contractual arrangements with the investment fund, where appropriate with the aid of an impartial adviser, should not be restricted by excessive regulation at European level, particularly since the cross-border impact is limited.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation Recital 4

Text proposed by the Commission

(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.

Amendment

(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 *advising on or* selling investment products are subject to uniform requirements in relation to the provision of the key information document to retail investors.

Amendment 2

Proposal for a regulation Recital 10

Text proposed by the Commission

(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

Amendment

(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.

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. ***The importance of the key information document should also be stressed to retail investors, so that regulation has an effect. However, this should not preclude the use of cross-references within the key information document to other documents where additional information can be found that might be of interest to some retail investors.***

Amendment 3

Proposal for a regulation Recital 12

Text proposed by the Commission

(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.

Amendment

(12) The key information document should be drawn up in a format which allows retail investors, ***before taking an investment decision, genuinely*** 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

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.

different ways of presenting information with consumers. ***Such delegated acts should include relevant standards elaborated by the ESAs. In particular, when elaborating standards relating to the risk and reward profile, a system of a visual warning based on a scale of risk should be assessed.*** 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.

Amendment 4

Proposal for a regulation Recital 16

Text proposed 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.***

Amendment

(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, ***provided a causal link is established.*** Therefore, rules regarding the liability of the investment product manufacturers should be harmonised.

Amendment 5

Proposal for a regulation Recital 19

Text proposed by the Commission

(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.

Amendment

(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 ***provided that the key information document has been provided on another durable medium before the conclusion of the transaction.*** This Regulation is without prejudice to the Directive 2002/65/EC of the European Parliament and the Council.

Amendment 6

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) To ensure the trust of retail investors in investment products, requirements should be established for appropriate internal procedures which ensure that retail

Amendment

(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.

investors receive a substantive response from the investment product manufacturer to complaints, ***which should be given within a reasonable period of time and in writing. Replies should be forwarded to retail investors in the same language in which the complaint was written.***

Amendment 7

Proposal for a regulation Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) Retail investors should duly informed about the alternative dispute resolution entities by which they are covered and which are competent to deal with potential disputes between themselves and the retail investor.

Amendment 8

Proposal for a regulation Article 1

Text proposed by the Commission

Amendment

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.

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 ***intermediaries and*** uniform rules on the provision of this document to retail investors.

Justification

Intermediaries should be obliged to provide information, e.g. on the real costs, their remuneration or the investment product tax regime. All information needed to take an informed decision to invest in a product should be accessible through one document only. Consumer should not be obliged to consult the KID plus another document for the information to be disclosed as provided by MiFID or the Insurance Mediation Directive (IMD).

Amendment 9

Proposal for a regulation Article 2 - point a

Text proposed by the Commission

Amendment

(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; ***deleted***

Justification

The scope of this Regulation should not be restricted to ‘packaged’ investments or investments with a (partly) unknown return. All savings or investments products without any exception should have a KID available for consumers. This is a key condition to let consumers acquire the reflex to always consult the KID, whatever saving or investment products is being proposed to them.

Amendment 10

Proposal for a regulation Article 2 – paragraph 2 – point f

Text proposed by the Commission

Amendment

(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.

(f) pension products for which the financial arrangements do not fall under the scope of the Directive 2003/41/EC or under the Directive 2009/138/EC; and for which the level of retirement provision is in effect a promise or an offer by the employer to the employee. For pension products which do not fall under the Directive 2003/41/EC or the Directive 2009/138/EC or under this Regulation, Member States shall provide equivalent disclosure requirements.

Justification

In many Member States, there are different types of pension arrangements that are neither within the scope of IORP nor private. Some of these schemes would be exempted under the Commission’s proposal by virtue of Article 2(f), so would be subject to no disclosure requirements at EU level, but other, similar schemes would not be exempted because the employer is not required by national law to make a financial contributions. It is important to

avoid inconsistency across the European Union.

Amendment 11

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

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.

Amendment

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. ***Where the requirements of Directive 2009/138/EC and of this Regulation are equivalent, they shall be deemed to be met if the requirements of this Regulation are fulfilled.***

Justification

Avoid duplication of information requirements.

Amendment 12

Proposal for a regulation Article 4 - point f a (new)

Text proposed by the Commission

Amendment

(fa) “person selling” means the person advising an investment product to a retail investor or acting as an intermediary for an investment by a retail investor.

Justification

The person selling the investment product is not defined by the proposed Regulation. The sale is a too narrow concept as some intermediaries do not ‘sell’ the investment product but create the contact between the consumer and the manufacturer (e.g. insurance undertaking).

Amendment 13

Proposal for a regulation

Article 4 – paragraph 1 – point c – point ii

Text proposed by the Commission

(ii) customers ***within the meaning*** of Directive 2002/92/EC;

Amendment

(ii) customers ***who are not professional customers as defined in [relevant Articles of IMD] [...]***of Directive 2002/92/EC;

Amendment 14

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

1. 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.

Amendment

1. 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 ***together with the prospectus where a prospectus is published and at least on its*** website before the investment product can be sold to retail investors. ***The key information document shall be completed by the distributor where relevant.***

Justification

The Rapporteur considers that everywhere the prospectus is published and accessible for retail investors, the KID – at least the manufacturer's part of it – should be also available on the same place. And it would be preferable that all KIDs are easily accessible on an official website of the control authority.

The Rapporteur supports the general duty for the manufacturer to draw up a KID. However, the manufacturer's information should be completed with information added by the distributor.

Amendment 15

Proposal for a regulation Article 6 – Paragraph 1

Text proposed by the Commission

1. The key information document shall be accurate, fair, clear and not misleading

Amendment

1. The key information document shall ***constitute pre-contractual information***. It shall be accurate, fair, clear and not misleading. ***The document shall make it possible to compare products before taking an investment decision.***

Amendment 16

Proposal for a regulation Article 6 – Paragraph 2

Text proposed by the Commission

2. The key information document shall be a stand-alone document, clearly separate from marketing materials.

Amendment

2. The key information document shall be a stand-alone document, clearly separate from marketing materials ***and shall not contain any advertising, marketing or recommendation to invest in any product.***

Cross-references to other documents are permitted. Information that is cross-referenced shall only be information that is additional to the information required to be included in the key information document by this Regulation, shall comply with paragraph 3 of Article 8 and shall not contain any advertising, marketing or recommendation to invest in any product.

Amendment 17

Proposal for a regulation Article 6 – Paragraph 3 – introductory part

Text proposed by the Commission

3. The key information document shall be

Amendment

3. The key information document shall be

drawn up as a short document which is:

drawn up as a short document, **written in a short and concise manner and not exceeding 3 pages of A4-sized paper**, which is:

Amendment 18

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Justification

The Rapporteur considers it as fundamental that the KID must be understood by the public the intermediary is addressing to. In this regard, the proposed Article 7 can be problematic: as a result of its wording, the KID can be offered to a retail investor in a language that is not (well) understood by the consumer.

Amendment 19

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

1. 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

Amendment

1. 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 **and opportunities** of investing in **it, as well as the costs**

an informed decision about whether to invest.

associated to it, including the potential fees paid to your intermediaries. You are advised to read it to help you compare different investment products. This document does not represent a purchasing recommendation. You may need to read other documents so you can take an informed decision about whether to invest.

Amendment 20

Proposal for a regulation

Article 8 – paragraph 2 – point b – point iv a (new)

Text proposed by the Commission

Amendment

(iva) A provision that the manufacturer shall transparently inform the customer through a yearly document about the performance of the investment product. This document shall contain an ex-post disclosure of the investment product's performance in the past year. Furthermore, this ex-post performance shall be compared to a different investment product with a comparable risk profile. If the customer owns several investment products of a certain manufacturer and covered by this regulation, the aforementioned disclosure and comparison shall be applied to the whole portfolio. Any fees affecting the yield of the investment product shall also be disclosed.

Justification

This amendment aims at providing transparency on the performance of investment products covered by this regulation. Therefore, the performance of a certain product and the portfolio if applicable should be compared to a different product with comparable risks. Moreover, all fees affecting the yield should be revealed.

Amendment 21

Proposal for a regulation

Article 8 - paragraph 2 - point c - point ii)

Text proposed by the Commission

ii) whether the investment product is covered by a compensation or guarantee scheme;

Amendment

ii) whether the investment product is covered by a compensation or guarantee scheme, ***detailing which risks are covered by the scheme and which are not;***

Justification

The protection granted by a compensation or a guarantee scheme can be of different shapes: the investor compensation scheme protects the customer against the loss of the instrument by the investment firm, not against financial losses due to the volatility of underlying assets or insolvency of the issuers of those underlying assets. The Regulation should be more precise to avoid any misuse of this provision.

Amendment 22

Proposal for a regulation

Article 8 – paragraph 2 – point e

Text proposed by the Commission

(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;***

Amendment

e) under a section titled "What are the risks and what might I get back?"

(i) The risk and reward profile of the investment product, including a summary indicator of this profile ***that also reflects the impact of costs, accompanied by a warning and an explanation in plain language of the key risks of the product.***

The summary indicator of risk and reward shall contain future performance scenarios reflecting the impact of costs and mentioning three reasonably likely scenarios, including a negative and positive one;

(ii) a comparison of the likely future performance of the investment product, including risks to it, with that of a risk free benchmark;

Amendment 23

Proposal for a regulation

Article 8 – paragraph 2 – point f

Text proposed by the Commission

(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;

Amendment

(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; *and, for comparability reasons, total taxes and any fees to be paid by the retail investor; expressed in monetary and percentage terms, to show the effects of the total costs on the return of the investment, together with an indication about the payment terms in relation to the costs.*

The section shall also refer to an annex that details any additional costs charged by the distributor not shown in this section, including any fees paid to the intermediary

Amendment 24

Proposal for a regulation

Article 8 – paragraph 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) under a section titled "Do I have to pay taxes?", indications about the fiscal regime applicable to the investment product, where applicable;

Justification

Retail investors should be aware of the applicable fiscal regime since taxes impact on the gain that the investor draws from the investment made.

Amendment 25

Proposal for a regulation

Article 8 – paragraph 2 – point f b (new)

Text proposed by the Commission

Amendment

(fb) under a section titled "What are the conditions to purchase this product?", any conditions or restrictions to the purchase of the investment product, including any minimum initial and/or subsequent investment required;

Justification

Retail investors should be properly informed of any conditions associated with the purchase of an investment product, such as minimum investment required (initial and subsequent).

Amendment 26

Proposal for a regulation

Article 8 – paragraphe 2 – point g

Text proposed by the Commission

Amendment

(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;

(g) under a section titled 'How has it done in the past?', the past performance of the investment product, complemented by a warning that past returns do not guarantee future performance; where the investment product is linked to a benchmark, the performance of the latter shall also be published in such a way to enable comparison between the performance of the investment product and that of the benchmark, if this is relevant having regard to the nature of the product and the length of its track record

Amendment 27

Proposal for a regulation

Article 8 – paragraph 2 – point h

Text proposed by the Commission

(h) for pension products, under a section titled "What might I get when I retire?", projections of possible future outcomes.

Amendment

(h) for pension products, under a section titled "What might I get when I retire?", projections of possible future outcomes; ***clearly subdivided into various development scenarios, including negative scenario highlighting the potential loss for the retail investors.***

With regard to pension products, retail investors should in addition be informed clearly and comprehensibly about any limits to the withdrawal of funds.

Amendment 28

Proposal for a regulation

Article 8 – paragraph 2 – point h a (new)

Text proposed by the Commission

Amendment

(ha) under a section titled "How can I complain?", information about how a client can launch a complaint about the product.

Amendment 29

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. The investment product manufacturer may only include other ***objective*** information where it is necessary for the retail investor to take an informed investment decision about a specific investment product.

Justification

The regulation on delegated acts in Article 8(5) can create problems in terms of compatibility with the some Member States constitutional laws. The concern relates to Article 8(3), where “other information” may be included. Since the possibility of including “other information” exists, this is associated with a risk that information which can trigger investment decisions will be regulated in delegated acts.

Amendment 30

Proposal for a regulation Article 8 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. The Commission shall be empowered to adopt ***technical standards*** 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 ***objective*** 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 performance scenarios referred to in paragraph 2 (e) i) shall take into account the impact of costs over time and shall take into account possible future performance.

The indicator shall make it clear that the potential for greater rewards is linked to taking greater risks.

The warning referred to in paragraph 2 point (e) i) shall be a visual warning based on a scale of risk, designed in a way that the investor understand that no investment product is risk free and that he must not act without understanding the investment product or without a personal advice regarding the planned investment.

The summary indicator of the risk and reward and the warning on risks shall be designed to make the risks the investors

are taking on clear and comparable between products.

The comparison referred to in paragraph 2 point (e) ii) shall be designed to help the investor to understand how taking greater risk impacts the rewards of the investment product, and the risk-free benchmark, such as that of a savings account, shall be set in way that is comprehensible for retail investors and not misleading to them.

The summary indicator of the costs referred to in paragraph 2 (f) shall illustrate in monetary terms the impact of the costs on what the investor might get back from their investment over time. It shall include figures that can be used by retail investors to compare between products.

The Commission shall take into account disclosures to retail investors made by the person selling the investment product related to costs under [MiFID] and [IMD], to ensure that there is consistency in information on costs in the key information document with these other disclosures, and that the information is comprehensive about costs and clearly shows to the retail investor the overall impact that costs may have.

The Commission shall take into account the differences between investment products and the capabilities of retail investors as well as the features of investment products that allow the retail investor to select between different underlying investments or other options provided for by the product, including where this selection can be undertaken at different points in time, or changed in the future.

The Commission shall 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.

Before adopting technical standards, the Commission shall conduct due consumer testing in order to select the most appropriate measures for consumers.

Amendment 31

Proposal for a regulation

Article 8 - paragraph 6 - subparagraph 2

Text proposed by the Commission

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 [...].

Amendment

The draft regulatory technical standards shall take into account the different types of investment products. ***The European Supervisory Authorities shall conduct due consumer testing to determine the best methodology and calculation under (a) and (b) for retail investors.*** The European Supervisory Authorities shall submit those draft regulatory technical standards to the Commission by [...].

Justification

During the preparation of the Commission Regulation on the KIID for UCITS, big test was carried out with real consumers before adopting the final layout of the KIID. The same methodology should be adopted when designing the KID. Testing the effective impact of the planned KID on consumers is a key of its success, particularly when designing the layout or the risk disclosure.

Amendment 32

Proposal for a regulation

Article 10 – paragraph 2 – introductory part

Text proposed by the Commission

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:

Amendment

2. The Commission shall be empowered to adopt ***technical standards*** 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:

Justification

In order to provide appropriate flexibility and to enable the industry and the ESAs to react swiftly to developments in the market place, the three ESAs should collectively draw up joint regulatory technical standards rather than the Commission being empowered to adopt delegated acts.

Amendment 33

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

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*.

Amendment

1. **A retail investor who has relied when making an investment decision on** a key information document which does not comply with the requirements *in* Articles 6, 7 and 8 may claim from the investment product manufacturer damages for *financial* loss caused *by the investment product manufacturer's failure to comply with those requirements. The information in the key information document shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus. Where other contractual documentation exists, the key information document shall be consistent with those documents*.

Amendment 34

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. **Where** a retail investor *has suffered* 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.

Amendment 35

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***and shall keep a record thereof, whereby the burden of proof shall rest with the investment product manufacturer.***

When an investment is recommended or advised to a client, the key information document shall be provided to the client without any delay.

Amendment 36

Proposal for a regulation Article 12 - paragraph 2

Text proposed by the Commission

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.

Amendment

deleted

Justification

The Rapporteur is concerned by the exception proposed to the delivery of the KID prior to the transaction when the transaction occurs using a means of distant communication. This exception creates an important loophole in the KID Regulation. If we consider that the KID is necessary to take an informed investment decision, it should not be possible to invest without having had the possibility to read it. Reading the KID after the investment is not protecting the client, unless a right of withdrawal is granted by this regulation.

Amendment 37

Proposal for a regulation

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. By way of derogation from paragraph 1 and where the retail investor uses means of distance communication to conclude the transaction, the person selling an investment product may provide the retail investor with the key information document immediately after the conclusion of the transaction where:

(i) the retail investor has requested the key information document on paper, and

(ii) the key information document has been provided to the retail investor on another durable medium as referred to in Article 13 paragraph 2 point b) before the conclusion of the transaction.

Justification

There is a need to ensure flexibility to facilitate the conclusion of transactions at the moment chosen by the retail investor. The means of communication used should not result in the investor losing the momentum for an investment. If the retail investor wishes to have the KID on paper, this should not prevent him to conclude the transaction as long as the KID is provided through other electronic means before the transaction is concluded.

Amendment 38

Proposal for a regulation Article 12 - paragraph 3

Text proposed by the Commission

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.

Amendment

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 ***unless the key information document has been updated or more than six months elapsed since the first transaction.***

Justification

If a long time elapsed since the provision of the KID or if the KID has been updated, the first provision of the KID should not be considered as sufficient for further transactions.

Amendment 39

Proposal for a regulation Article 12 – paragraph 4 – introductory part

Text proposed by the Commission

4. The ***Commission shall be empowered to adopt delegated acts*** in accordance with Article 23 specifying:

Amendment

4. The ***European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) shall jointly develop draft technical standards*** in accordance with Article 23 specifying ***the conditions for fulfilling the requirement to provide the key information document in good time as laid down in paragraph 1.***

Justification

In order to provide appropriate flexibility and to enable the industry and the ESAs to react

swiftly to developments in the market place, the three ESAs should collectively draw up joint regulatory technical standards rather than the Commission being empowered to adopt delegated acts. Restructuring of the text following the deletion of paragraph 2 and point (b) in this paragraph.

Amendment 40

Proposal for a regulation

Article 12 – paragraph 4 – point b

Text proposed by the Commission

Amendment

(b) the method and the time limit for the provision of the key information document in accordance with paragraph 2. **deleted**

Justification

Deletion in line with the deletion of paragraph 2.

Amendment 41

Proposal for a regulation

Article 12 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Power is conferred on the Commission to adopt 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 (EU) No 1094/2010, Articles 10 to 14 of Regulation (EU) No 1095/2010.

Amendment 42

Proposal for a regulation

Article 13 paragraph 1

Text proposed by the Commission

Amendment

1. The person selling an investment

1. The person selling an investment

product shall provide the key information document to retail investors free of charge.

product shall provide the key information document to retail investors free of charge.

That person must be in position to prove that the key information document has been provided according the provision of this Regulation.

Amendment

43

Proposal for a regulation

Article 13 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The person selling an investment product shall provide the key information document to the retail investor in one of the following media:

2. The person ***advising on or*** selling an investment product shall provide the key information document to the retail investor in one of the following media ***that are accessible for the retail investor concerned:***

Amendment 44

Proposal for a regulation

Article 13 – paragraph 3

Text proposed by the Commission

Amendment

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.

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. ***A paper copy shall also be provided free of charge when the investment recommendation or the intermediation service is provided in person (face to face).***

Justification

As provided by Article 12(1), the KID should be provided in good time before the conclusion of a transaction relating to the investment product (see Art. 12(1)). When the investment recommendation is provided in person (face to face), or when the investment order is given in person, e.g. at a bank counter or in the intermediary's premises, the KID must be provided in paper form.

Amendment 45

Proposal for a regulation Article 14 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

(i) retail investors have an effective way of submitting a complaint against the investment product manufacturer;

(ii) 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

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

Amendment 46

Proposal for a regulation Article 15

Text proposed by the Commission

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,

Amendment

1. ***Member States shall ensure that*** where a retail investor initiates a procedure for alternative dispute resolution laid down in national law against an investment product manufacturer or a person selling investment products with regard to a dispute concerning ***the key information document and the underlying investment products*** the investment product manufacturer or the person selling investment

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.

products shall participate in that procedure ***according to the rules laid down in the Directive [...] on alternative dispute resolution and*** provided that it fulfils the following requirements:

- (a) the procedure results in decisions which ***may be binding for the manufacturer and the person selling investment products;***
- (b) the limitation period for bringing the dispute before a court is suspended for the duration of the procedure for alternative dispute resolution;
- (c) the period of prescription of the claim is suspended for the duration of the procedure;
- (d) the procedure is free of charge or ***available at nominal fee;***

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

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

Amendment 47

Proposal for a regulation Article 15 a (new)

Text proposed by the Commission

Amendment

Information about alternative dispute resolutions

15 a. Member States shall ensure that investment product manufacturer or a person selling investment product inform the retail investor about the alternative dispute resolution entities by which they are covered and which are competent to deal with potential disputes between themselves and the retail investor. They shall also specify whether or not they commit or are obliged to use these entities to resolve disputes with retail investors.

2. The information referred to in paragraph 1 shall be mentioned in a clear, comprehensible and easily accessible way on the traders' website, where one exists, and if applicable in the general terms and conditions of sales or service contracts between the trader and a consumer.

3. Member States shall ensure that, in cases where a dispute between a retail investor and a investment product manufacturer or a person selling investment product in their territory could not be settled further to a complaint submitted directly by the retail investor to the investment product manufacturer or at person selling investment product, the latter provide to the retail investor information referred to in paragraph 1, specifying whether he will make use of the relevant alternative dispute resolution entities to settle the dispute. This information shall be provided on paper or another durable medium.

Amendment 48

Proposal for a regulation Article 15 b (new)

Text proposed by the Commission

Amendment

Collective alternative disputes resolutions

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

Amendment 49

Proposal for a regulation Article 19 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) a warning, which is made public and which identifies the person responsible and the nature of the breach;

(c) a warning, which is made public and which identifies the **legal** person responsible and the nature of the breach;

Amendment 50

Proposal for a regulation Article 22 – paragraph 1

Text proposed by the Commission

Amendment

1. 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***

1. 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.

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.

Justification

The exceptions to the publication of sanctions should be deleted. The breaches mentioned in Art. 19 (1) are not of such a kind that their publication could seriously jeopardise financial markets. As long as the names of issuers or intermediaries condemned are not made public, there will never be any deterrent effect preventing illegal practices and it will always be advantageous to commit offenses.

Amendment 51

**Proposal for a regulation
Article 23 – paragraph 1**

Text proposed by the Commission

1. The power to adopt ***delegated acts*** is conferred on the Commission subject to the conditions laid down in this Article.

Amendment

1. The power to adopt ***technical standards*** is conferred on the Commission subject to the conditions laid down in this Article.

Justification

In order to provide appropriate flexibility and to enable the industry and the ESAs to react swiftly to developments in the market place, the three ESAs should collectively draw up joint regulatory technical standards rather than the Commission being empowered to adopt delegated acts.

Amendment 52

**Proposal for a regulation
Article 23 – paragraph 2**

Text proposed by the Commission

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

Amendment

2. The power to adopt ***technical standards*** 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.

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.

Justification

In order to provide appropriate flexibility and to enable the industry and the ESAs to react swiftly to developments in the market place, the three ESAs should collectively draw up joint regulatory technical standards rather than the Commission being empowered to adopt delegated acts.

Amendment 53

Proposal for a regulation Article 23 – paragraph 3

Text proposed by the Commission

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.

Amendment

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 ***technical standards*** already in force.

Justification

In order to provide appropriate flexibility and to enable the industry and the ESAs to react swiftly to developments in the market place, the three ESAs should collectively draw up joint regulatory technical standards rather than the Commission being empowered to adopt delegated acts.

Amendment 54

Proposal for a regulation Article 23 – paragraph 4

Text proposed by the Commission

4. As soon as it adopts a **delegated act**, the Commission shall notify it simultaneously to the European Parliament and to the Council.

Amendment

4. As soon as it adopts **technical standards**, the Commission shall notify it simultaneously to the European Parliament and to the Council.

Justification

In order to provide appropriate flexibility and to enable the industry and the ESAs to react swiftly to developments in the market place, the three ESAs should collectively draw up joint regulatory technical standards rather than the Commission being empowered to adopt delegated acts.

Amendment 55

Proposal for a regulation Article 23 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. A **technical standard** 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.

Justification

In order to provide appropriate flexibility and to enable the industry and the ESAs to react swiftly to developments in the market place, the three ESAs should collectively draw up joint regulatory technical standards rather than the Commission being empowered to adopt delegated acts.

Amendment 56

Proposal for a regulation

Article 24 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

When a Member State applies rules on the format and content of the key information document, as set out in Articles 78 to 81 of Directive 2009/65/EC, to non UCITS funds offered to retail investors, the exemption set out in paragraph 1 shall apply to management companies, investment companies and persons selling or advising on units of such funds to retail investors.

Justification

Member States should be permitted to allow non UCITS funds which at national level are currently subject to the key investor information requirements as formulated in the UCITS 4 Directive, should also be covered by the transitional period. This would contribute in fostering a level playing field among investment products.

Amendment 57

Proposal for a regulation

Article 24 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Management companies and investment companies as defined in Article 4(1)(b) of Directive 2011/61/EU, and persons selling units of AIFs as defined in Article 4(1)(a) of that Directive, are exempted from the obligations under this Regulation provided that they provide a key investor information document pursuant to national law in accordance with Article 78 of Directive 2009/65/EC or relevant provisions of national law, until [OJ: please insert the date 5 years after the entry into force].

Justification

Many Member States have extended the KIID standards for UCITS to other open-ended retail investment funds regulated at national level. Those funds should also be able to benefit from the temporary exemption from the scope as investors in those funds have only just been informed of the new document and the AIFMs have already had to bear the KIID implementing costs in the same way as UCITS management companies.

Amendment 58

Proposal for a regulation

Article 25 – paragraph 1

Text proposed by the Commission

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.

Amendment

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, ***including those falling under the Directive 2003/71/EC and any other investments and savings products.***

Justification

The review clause of this regulation should also include the revision of the scope to other retail financial products, including “unpackaged” investments and all forms of savings products.

PROCEDURE

Title	Key information documents for investment products		
References	COM(2012)0352 – C7-0179/2012 – 2012/0169(COD)		
Committee responsible Date announced in plenary	ECON 11.9.2012		
Opinion by Date announced in plenary	IMCO 13.12.2012		
Rapporteur Date appointed	Pier Antonio Panzeri 18.9.2012		
Discussed in committee	10.1.2013	20.2.2013	11.4.2013
Date adopted	25.4.2013		
Result of final vote	+: 34 -: 1 0: 0		
Members present for the final vote	Adam Bielan, Preslav Borissov, Cristian Silviu Buşoi, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia de Campos, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Thomas Händel, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Sandra Kalniete, Toine Manders, Franz Obermayr, Phil Prendergast, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Bernadette Vergnaud		
Substitute(s) present for the final vote	Ashley Fox, Ildikó Gáll-Pelcz, Anna Hedh, Constance Le Grip, Morten Løkkegaard, Pier Antonio Panzeri, Patricia van der Kammen, Kerstin Westphal		
Substitute(s) under Rule 187(2) present for the final vote	Seán Kelly, Paul Rübig		