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

of 26 November 2014

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

(Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Retail investors are increasingly offered a wide variety of packaged retail and insurance-based investment products (PRIIPs) when they consider making an investment. Some of these products provide specific investment solutions tailored to the needs of retail investors, are frequently combined with insurance coverage or can be complex and difficult to understand. Existing disclosures to retail investors for such PRIIPs are uncoordinated and often do not help retail investors to compare different products, or understand their features. Consequently, retail investors have often made investments without understanding the associated risks and costs and have, on occasion, suffered unforeseen losses.

(2) Improving the transparency of PRIIPs offered to retail investors is an important investor protection measure and a precondition for rebuilding the confidence of retail investors in the financial market, in particular in the aftermath of the financial crisis. First steps in this direction have already been taken at Union level through the development of the key investor information regime established by Directive 2009/65/EC of the European Parliament and of the Council.

(3) The existence of different rules on PRIIPs, that vary according to the industry offering the PRIIPs and differences in national regulation in this area create an unlevel playing field between different products and distribution channels, erecting additional barriers to an internal 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 disclosures relating to PRIIPs impede the development of a level playing field between different PRIIP manufacturers and those advising on, or selling, these products, and thus distort competition and lead to unequal levels of investor protection within the Union. Such divergence represents an obstacle to the establishment and smooth functioning of the internal market.

(4) To prevent divergence, it is necessary to establish uniform rules on transparency at Union level which will apply to all participants in the PRIIPs market and thereby enhance investor protection. A regulation is necessary to ensure that a common standard for key information documents is established in a uniform fashion so as to be able to harmonise the format and the content of those documents. The directly applicable rules of a regulation should ensure that all those advising on, or selling, PRIIPs are subject to uniform requirements in relation to the provision of the key information document to retail investors. This Regulation has no effect on the supervision of advertising documents. Moreover, it has no effect on product intervention measures other than in relation to insurance-based investment products.

(5) Whilst improving disclosures relating to PRIIPs is essential in rebuilding the trust of retail investors in the financial markets, effectively regulated sales processes for those products are equally important. This Regulation is complementary to measures on distribution in Directive 2014/65/EU of the European Parliament and of the Council. It is also complementary to measures taken on the distribution of insurance products in Directive 2002/92/EC of the European Parliament and of the Council.

(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 amount repayable to the retail investor is subject to fluctuation because of exposure to reference values, or subject to the performance of one or more assets which are not directly purchased by the retail investor. Those products should be known as PRIIPs for the purposes of this Regulation and should include, among other things, investment products such as investment funds, life insurance policies with an investment element, structured products and structured deposits. Financial instruments issued by special purpose vehicles that conform to the definition of PRIIPs should also fall within the scope of this Regulation. For all those products, investments are not of the direct kind that is achieved when buying or holding assets themselves. Instead these products intercede between the retail investor and the markets through a process of packaging or wrapping together assets so as to create different exposures, provide different product features, or achieve different cost structures as compared with a direct holding. Such packaging can allow retail investors to engage in investment strategies that would otherwise be inaccessible or impractical, but can also require additional information to be made available, in particular to enable comparisons between different ways of packaging investments.

(7) In order to ensure that this Regulation applies solely to such PRIIPs, insurance products that do not offer investment opportunities and deposits solely exposed to interest rates should be excluded from the scope of this Regulation. In the case of life insurance products, the term ‘capital’ means capital that is invested on the request of the retail investor. In addition, any deposit or certificates which represent traditional deposits, other than structured deposits as defined in point (43) of Article 4(1) of Directive 2014/65/EU should be excluded from the scope of this Regulation. Assets that are held directly, such as corporate shares or sovereign bonds, are not PRIIPs, and should therefore be excluded from the scope of this Regulation. Investment funds dedicated to institutional investors are excluded from the scope of this Regulation since they are not for sale to retail investors. Individual and occupational pension products, recognised under national law as having the primary purpose of providing the investor with an income in retirement, should be excluded from the scope of this Regulation, in consideration of their peculiarities and objectives, whereas other individual insurance accumulation or saving products that offer investment opportunities should be covered by this Regulation.

(8) This Regulation does not prejudice the right of Member States to regulate the provision of key information on products that fall outside its scope. In accordance with their mandate for consumer protection under Article 9 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council, of Regulation (EU) No 1094/2010 of the European Parliament and of the Council and of Regulation (EU) No 1095/2010 of the European Parliament and of the Council, the European Supervisory Authority (European Banking Authority) ('EBA'), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA') and the European Supervisory Authority (European Securities and Markets Authority) ('ESMA') established by those Regulations (the 'ESAs') should monitor the products which are excluded from the scope of this Regulation and, where appropriate, should issue guidelines to address any problem which is identified. Such guidelines should be taken into account in the review, to be conducted four years after the entry into force of this Regulation, on the possible extension of the scope and the elimination of certain exclusions.

(9) To provide clarity on the relationship between the obligations established by this Regulation and obligations established by other legislative acts requiring the provision of information to investors, including but not limited to Directive 2003/71/EC of the European Parliament and of the Council and Directive 2009/138/EC of the European Parliament and of the Council, it is necessary to establish that those legislative acts continue to apply in addition to this Regulation.

(10) To ensure orderly and effective supervision of compliance with the requirements of this Regulation, Member States should designate the competent authorities responsible for that supervision. In many cases, competent authorities are already designated to supervise other obligations of PRIIP manufacturers, sellers or advisors, arising from other provisions of national and Union law.

(11) The competent authorities should be provided, upon request and including ex ante, with all necessary information to verify the contents of the key information documents, to assess compliance with this Regulation and to ensure the protection of clients and investors in financial markets.

(12) PRIIP manufacturers — such as fund managers, insurance undertakings, credit institutions or investment firms — should draw up the key information document for the PRIIPs that they manufacture, as they are in the best position to know the product. They should also be responsible for the accuracy of the key information document. The key information document should be drawn up by the PRIIP manufacturer before the product can be sold to retail investors. However, where a product is not sold to retail investors, there should be no obligation to draw up a key information document, and where it is impractical for the PRIIP manufacturer to draw up the key information document, it should remain possible for this task to be delegated to others. The obligations under this Regulation which are laid down in the provisions on drawing up, and the rules on revision of, the key information document should apply only to the PRIIP manufacturer and should continue to apply for as long as the PRIIP is traded on secondary markets. In order to ensure widespread dissemination and availability of key information documents, this Regulation should provide for publication by the PRIIP manufacturer of key information documents on its website.

(13) To meet the needs of retail investors, it is necessary to ensure that information on PRIIPs is accurate, fair, clear and not misleading for those retail 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 to 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 the key information document should be drawn up. Furthermore, retail investors should be able to understand the key information document on its own without referring to other non-marketing information.

(14) When developing the technical standards for the content of the key information document so as to reflect accurately the product's investment policies and its objectives in accordance with this Regulation, the ESAs should ensure that the PRIIP manufacturer uses clear and understandable language which is accessible to retail investors and that the description of how the investment targets are achieved, including the description of the financial instruments used, avoids financial jargon and terminology which is not immediately clear to retail investors.

(15) Retail investors should be provided with the information necessary for them to make an informed investment decision and compare different PRIIPs, but unless the information is short and concise there is a risk that they will not use it. The key information document should therefore only contain key information, in

particular 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 product.

(16) Investment product calculators are already being developed at national level. However, in order that the calculators are as useful as possible to consumers, they should cover the costs and fees charged by the various PRIIP manufacturers, together with any further costs or fees charged by intermediaries or other parts of the investment chain not already included by the PRIIP manufacturers. The Commission should report on whether those tools are available on-line in each Member State and whether they provide for reliable and accurate computations of aggregate costs and fees for all products within the scope of this Regulation.

(17) The key information document should be drawn up in a standardised format which allows retail investors to compare different PRIIPs, since consumer behaviour 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 PRIIPs and the presentation of this information should be further harmonised through regulatory technical standards that take into account existing and ongoing research into consumer behaviour, including results from testing the effectiveness of different ways of presenting information with consumers. In addition, some PRIIPs give the retail investor a choice between multiple underlying investments, such as internal funds held by insurance undertakings. Those products should be taken into account when drawing up the format.

(18) As some of the investment products within the scope of this Regulation are not simple and may be difficult for retail investors to understand, the key information document should, where applicable, include a comprehension alert to the retail investor. A product should be regarded as not being simple and as being difficult to understand in particular if it invests in underlying assets in which retail investors do not commonly invest, if it uses a number of different mechanisms to calculate the final return of the investment, creating a greater risk of misunderstanding on the part of the retail investor or if the investment's pay-off takes advantage of retail investor's behavioural biases, such as a teaser rate followed by a much higher floating conditional rate, or an iterative formula.

(19) Increasingly, retail investors pursue, along with the financial returns on their investment, additional purposes such as social or environmental goals. However, information on social or environmental outcomes sought by the PRIIP manufacturer can be difficult to compare or may be absent. Therefore, anticipated sustainable environmental and social developments in financial investments, as well as the application of Regulation (EU) No 346/2013 of the European Parliament and of the Council could allow for such aspects to be more appropriately integrated into, and further fostered by, Union law. However there are no established criteria and there is no formal procedure to verify such social or environmental criteria objectively, as there already are in the food sector. Therefore, it is desirable that in its review of this Regulation the Commission thoroughly considers developments relating to social and environmental investment products and the outcome of the review of Regulation (EU) No 346/2013.

(20) The key information document should be clearly distinguishable and separate from any marketing communications.

(21) To ensure that the information in the key information document is reliable, PRIIP manufacturers should be required to keep the key information document up to date. To that end, it is necessary to establish detailed rules relating to the conditions and frequency of the review of the information and the revision of the key information document in regulatory technical standards to be adopted by the Commission.

(22) Key information documents are the foundation for investment decisions by retail investors. For that reason, PRIIP manufacturers have a significant responsibility towards retail investors in ensuring that they are not misleading, inaccurate or inconsistent with the relevant parts of the contractual documents of the PRIIP. It is therefore important to ensure that retail investors 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 damage suffered due to failure to comply with this Regulation. Therefore, rules regarding the civil liability of the PRIIP manufacturers should be harmonised. Retail investors should be able to hold the PRIIP manufacturer liable for an infringement of this Regulation where damage is suffered as a result of reliance on a key information document that is inconsistent with pre-contractual or contractual documents under the PRIIP manufacturer's control, or is misleading or inaccurate.

(23) Matters concerning the civil liability of a PRIIP manufacturer which are not covered by this Regulation should be governed by the applicable national law. The court competent to decide on a claim for civil liability brought by a retail investor should be determined by the relevant rules on international jurisdiction.

(24) This Regulation does not introduce a passport allowing for the cross-border sale or marketing of PRIIPs to retail investors, or alter existing passport arrangements for the cross-border sale or marketing of PRIIPs, if any. This Regulation does not alter the allocation of responsibilities between existing competent authorities under existing passport arrangements. Competent authorities designated by Member States for the purposes of this Regulation should therefore be consistent with those competent for the marketing of PRIIPs under an existing passport, if any. The competent authority of the Member State where the PRIIP is marketed should be responsible for supervision of the marketing of that PRIIP. The competent authority of the Member State where the product is marketed should always have the right to suspend the marketing of a PRIIP within their territory in cases of non-compliance with this Regulation.

(25) The powers of EIOPA and the relevant competent authorities should be complemented by an explicit mechanism for prohibiting or restricting the marketing, distribution and sale of insurance-based investment products giving rise to serious concerns regarding investor protection, orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system, together with appropriate coordination and contingency powers for EIOPA. Those powers should also reflect the powers conferred on ESMA and EBA under Regulation (EU) No 600/2014 of the European Parliament and of the Council so as to ensure that such mechanisms for intervention can be applied for all investment products irrespective of their legal form. The exercise of such powers by competent authorities and, in exceptional cases, by EIOPA should be subject to the need to fulfil a number of specific conditions. Where those conditions are met, the competent authority or, in exceptional cases, EIOPA should be able to impose a prohibition or restriction on a precautionary basis before an insurance-based investment product has been marketed, distributed or sold to investors. Those powers do not imply any requirement to introduce or apply product approval or licensing by the competent authority or by EIOPA, and do not relieve the manufacturer of an insurance-based investment product of its responsibility to comply with all the relevant requirements of this Regulation. Moreover, those powers should be used exclusively in the public interest and should not give rise to civil liability on the part of the competent authorities.

(26) In order for the retail investor to be able to make an informed investment decision, persons advising on or selling PRIIPs should be required to provide the key information document in good time before any transaction is concluded. This requirement should apply irrespective of where or how the transaction takes place. However, where the transaction is by means of distance communication, the key information document may be provided immediately after the transaction is concluded as long as it is not possible to provide the key information document in advance and the retail investor consents. Persons advising on, or selling, PRIIPs include intermediaries and the PRIIP manufacturers themselves where the PRIIP manufacturers choose to advise on, or sell, the PRIIP directly to retail investors. This Regulation is without prejudice to Directive 2000/31/EC of the European Parliament and of the Council and to Directive 2002/65/EC of the European Parliament and of the Council.

(27) Uniform rules should be laid down in order to give the person advising on, or selling, the PRIIP a certain choice with regard to the medium in which the key information document is provided to retail investors, allowing for use of electronic communications where 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.

(28) To ensure the trust of retail investors in PRIIPs and in financial markets as a whole, requirements should be established for appropriate internal procedures which ensure that retail investors receive a substantive response from the PRIIP manufacturer to complaints.

(29) As the key information documents for PRIIPs should be produced by entities operating in the banking, insurance, securities and fund sectors of the financial markets, it is of utmost importance to ensure smooth cooperation between the various authorities supervising PRIIP manufacturers and persons advising on, or selling, PRIIPs so that they have a common approach to the application of this Regulation.

(30) In line with the Commission Communication of 8 December 2010 entitled ‘Reinforcing sanctioning regimes in the financial services sector’ and in order to ensure that the requirements of this Regulation are fulfilled, it is important that Member States take necessary steps to ensure that infringements of this

Regulation are subject to appropriate administrative penalties and measures. In order to ensure that penalties have a dissuasive effect and to strengthen investor protection by warning them about PRIIPs marketed in infringement of this Regulation, sanctions and measures should normally be published, except in certain well-defined circumstances.

(31) Although Member States may lay down rules for administrative and criminal penalties for the same infringements, Member States should not be required to lay down rules for administrative penalties for the infringements of this Regulation which are subject to national criminal law. In accordance with national law, Member States are not obliged to impose both administrative and criminal penalties for the same offence, but they should be able to do so if their national law so permits. However, the maintenance of criminal penalties instead of administrative penalties for infringements of this Regulation should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.

(32) 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 the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives, and the conditions for the exercise of intervention powers by EIOPA and the competent authorities. 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 to the Council.

(33) The Commission should adopt draft regulatory technical standards developed by the ESAs, through the Joint Committee, with regard to the presentation and the content of the key information document, the standardised format of the key information document, the methodology underpinning the presentation of risk and reward and the calculation of costs, as well as the conditions and the minimum frequency for reviewing the information contained in the key information document and the conditions fulfilling the requirement on the provision of the key information document to retail investors in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010. The Commission should complement the technical work of the ESAs by conducting consumer tests of the presentation of the key information document as proposed by the ESAs.

(34) Directive 95/46/EC of the European Parliament and of the Council 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, governs the processing of personal data carried out by the ESAs pursuant to this Regulation and under the supervision of the European Data Protection Supervisor. Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities should be undertaken in accordance with Directive 95/46/EC and any exchange or transmission of information by the ESAs should be undertaken in accordance with Regulation (EC) No 45/2001.

(35) While undertakings for collective investment in transferable securities (UCITS) constitute 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 five years after the entry into force of this Regulation during which they would not be subject to this Regulation. After the expiry of that transitional period and in the absence of any extension thereto, UCITS should become subject to this Regulation. That transitional period should also apply to management companies, investment companies and persons advising on, or selling, units of non-UCITS funds when a Member State applies rules on the format and content of the key information document, as laid down in Articles 78 to 81 of Directive 2009/65/EC, to such funds.

(36) A review of this Regulation should be carried out four years after its entry into force in order to take account of market developments, such as the emergence of new types of PRIIPs, as well as developments in other areas of Union law and the experiences of Member States. The review should also assess the feasibility, costs and possible benefits of introducing a label for social and environmental investments. Furthermore, the review should assess whether the measures introduced have improved the average retail investor understanding of PRIIPs and the comparability of the PRIIPs. It should also consider whether the transitional period applying to UCITS or certain non-UCITS should be extended, or whether other options for the treatment of such funds might be considered. In addition, it should assess whether the exemption of products

from the scope of this Regulation should be maintained, in view of the need for sound standards of consumer protection including comparisons between financial products. As part of the review, the Commission should also carry out a market survey to determine whether there are online calculator tools available in the market which allow the retail investor to compute the aggregate costs and fees of PRIIPs and whether those tools are made available free of charge. On the basis of that review, the Commission should submit a report to the European Parliament and to the Council accompanied, if appropriate, by legislative proposals.

(37) Having regard to the ongoing work undertaken by EIOPA on disclosure of product information requirements for personal pension products and taking into account the specificities of those products, the Commission should, within four years after the entry into force of this Regulation, assess whether to maintain the exclusion of pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits. In making its assessment, the Commission should consider whether this Regulation is the best legislative mechanism for ensuring the disclosure relating to pension products, or whether other disclosure mechanisms would be more appropriate.

(38) In order to give PRIIP manufacturers and persons advising on, or selling, PRIIPs sufficient time to prepare for the practical application of the requirements of this Regulation, it should not be applicable until two years after the date of its entry into force.

(39) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of the Fundamental Rights of the European Union.

(40) Since the objectives of this Regulation, namely to enhance retail investor protection and improve retail investor confidence in PRIIPs, including where those products are sold cross-border, cannot be sufficiently achieved by the Member States but can rather, by reason of its effects, be better achieved at Union level the Union may adopt measures, in accordance with principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(41) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered its opinion,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

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

Article 2

1.This Regulation shall apply to PRIIP manufacturers in relation to PRIIPs which are, or are to be, made available to retail investors, and persons advising on, or selling, PRIIPs.

2.This Regulation shall not apply to the following products:

(a) non-life insurance products as listed in paragraph 22 of Schedule 2 to the Financial Services Act 2019;

(b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;

(c) deposits other than structured deposits as defined in paragraph 77(2) of Schedule 2 to the Financial Services Act 2019;

(d) securities in Article 1(2)(b) to (f), 1(4)(j) and 1(5)(i) of Regulation (EU) 2017/1129 as it forms part of the law of Gibraltar;

(e) pension products which, under the law of Gibraltar or a third country, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;

(f) officially recognised occupational pension schemes within the scope of the Financial Services (Occupational Pensions Institutions) Regulations 2020 or the Financial Services (Insurance Companies) Regulations 2020 or as defined in regulation 4 of the Employment (Occupational Pensions) Regulations 2018;

(g) individual pension products for which a financial contribution from the employer is required by the law of Gibraltar or a third country and where the employer or the employee has no choice as to the pension product or provider.

Article 3

1.Where PRIIP manufacturers subject to this Regulation are also subject to the prospectus provisions, both this Regulation and those provisions apply.

2.Where PRIIP manufacturers subject to this Regulation are also subject to the Financial Services (Insurance Companies) Regulations 2020, both this Regulation and those Regulations apply.

3.In this Article, the "prospectus provisions" means Chapter 3 of Part 19 of the Financial Services Act 2019, any Prospectus Rules made under that Chapter and egulation (EU) 2017/1129 as it forms part of the law of Gibraltar.

Article 4

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

(1) 'packaged retail investment product' or 'PRIP' means an investment, including instruments issued by special purpose vehicles as defined in regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020 or securitisation special purpose entities as defined in Article 2(2) of Regulation (EU) 2017/2402 as it forms part of the law of Gibraltar, where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor;

(2) 'insurance-based investment product' means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations;

(3) 'packaged retail and insurance-based investment product' or 'PRIIP' means a product that is one or both of the following:

(a) a PRIP;

(b) an insurance-based investment product;

(4) 'packaged retail and insurance-based investment product manufacturer' or 'PRIIP manufacturer' means:

(a) any entity that manufactures PRIIPs;

(b) any entity that makes changes to an existing PRIIP including, but not limited to, altering its risk and reward profile or the costs associated with an investment in a PRIIP;

(5) 'selling a PRIIP' means–
(a) offering a PRIIP contract to a retail investor; or

(b) concluding a PRIIP contract with a retail investor;

(5A) 'advising on a PRIIP' means advising a retail investor on a PRIIP;

(6) 'retail investor' means:

(a) a retail client as defined in regulation 2(1) of the Financial Services (Investment Services) Regulations 2020;

(b) a customer within the meaning of the Financial Services (Insurance Distribution) Regulations 2020, where that customer would not qualify as a professional client as defined in regulation 2(1) of the Financial Services (Investment Services) Regulations 2020;

(7) 'durable medium' means an instrument which enables an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

(8) 'GFSC' means the Gibraltar Financial Services Commission, within the meaning of section 21(1) of the Financial Services Act 2019;
(9) 'the Minister' means the Minister with responsibility for financial services;

(10) 'technical standards' has the meaning given in section 626A of the Financial Services Act 2019;
(11) 'third country' means a country or territory outside Gibraltar.

CHAPTER II

KEY INFORMATION DOCUMENT

SECTION I

Drawing up the key information document

Article 5

1.Before a PRIIP is made available to retail investors, the PRIIP manufacturer shall draw up for that product a key information document in accordance with the requirements of this Regulation and shall publish the document on its website.

2.*Omitted*

SECTION II

Form and content of the key information document

Article 6

1.The key information document shall constitute pre-contractual information. It shall be accurate, fair, clear and not misleading. It shall provide key information and shall be consistent with any binding contractual documents, with the relevant parts of the offer documents and with the terms and conditions of the PRIIP.

2.The key information document shall be a stand-alone document, clearly separate from marketing materials. It shall not contain cross-references to marketing material. It may contain cross-references to other documents including a prospectus where applicable, and only where the cross-reference is related to the information required to be included in the key information document by this Regulation.

3.By way of derogation from paragraph 2, where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each underlying investment option cannot be provided within a single, concise stand-alone document, the key information document shall provide at least a generic description of the underlying investment options and state where and how more detailed pre-contractual information documentation relating to the investment products backing the underlying investment options can be found.

4.The key information document shall be drawn up as a short document written in a concise manner and of a maximum of three sides of A4-sized paper when printed, which promotes comparability. It shall:

(a) be presented and laid out in a way that is easy to read, using characters of readable size;

(b) focus on the key information that retail investors need;

(c) be clearly expressed and written in language and a style that communicate in a way that facilitates the understanding of the information, in particular, in language that is clear, succinct and comprehensible.

5.Where colours are used in the key information document, they shall not diminish the comprehensibility of the information if the key information document is printed or photocopied in black and white.

6.Where the corporate branding or logo of the PRIIP manufacturer or the group to which it belongs is used in the key information document, it shall not distract the retail investor from the information contained in the document or obscure the text.

Article 7

The key information document must be written in English, or where it has been written in a different language, must be translated into English and the translation must faithfully and accurately reflect the content of the original key information document.

Article 8

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

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

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

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

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

(a) at the beginning of the document, the name of the PRIIP, the identity and contact details of the PRIIP manufacturer and the date of the document;

(b) where applicable, a comprehension alert which shall read: ‘You are about to purchase a product that is not simple and may be difficult to understand.’;

(c) under a section titled ‘What is this product?’, the nature and main features of the PRIIP, including:

(i) the type of the PRIIP;

(ii) its objectives and the means for achieving them, in particular whether the objectives are achieved by means of direct or indirect exposure to the underlying investment assets, including a description of the underlying instruments or reference values, including a specification of the markets the PRIIP invests in, including, where applicable, specific environmental or social objectives targeted by the product, as well as how the return is determined;

(iii) a description of the type of retail investor to whom the PRIIP is intended to be marketed, in particular in terms of the ability to bear investment loss and the investment horizon;

(iv) where the PRIIP offers insurance benefits, details of those insurance benefits, including the circumstances that would trigger them;

(v) the term of the PRIIP, if known;

(d) under a section titled ‘What are the risks and what could I get in return?’, a brief description of the risk-reward profile comprising the following elements:

(i) a summary risk indicator, supplemented by a narrative explanation of that indicator, its main limitations and a narrative explanation of the risks which are materially relevant to the PRIIP and which are not adequately captured by the summary risk indicator;

(ii) the possible maximum loss of invested capital, including, information on:

- whether the retail investor can lose all invested capital, or

- whether the retail investor bears the risk of incurring additional financial commitments or obligations, including contingent liabilities in addition to the capital invested in the PRIIP, and

- where applicable, whether the PRIIP includes capital protection against market risk, and the details of its cover and limitations, in particular with respect to the timing of when it applies;

(iii) appropriate performance scenarios, and the assumptions made to produce them;

(iv) where applicable, information on conditions for returns to retail investors or built-in performance caps;

(v) a statement that the tax legislation which applies to the retail investor may have an impact on the actual payout;

(e) under a section titled ‘What happens if [the name of the PRIIP manufacturer] is unable to pay out?’, a brief description of whether the related loss is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not;

(f) under a section titled ‘What are the costs?’, the costs associated with an investment in the PRIIP, comprising both direct and indirect costs to be borne by the retail investor, including one-off and recurring costs, presented by means of summary indicators of these costs and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment.

The key information document shall include a clear indication that advisors, distributors or any other person advising on, or selling, the PRIIP will provide information detailing any cost of distribution that

is not already included in the costs specified above, so as to enable the retail investor to understand the cumulative effect that these aggregate costs have on the return of the investment;

(g) under a section titled ‘How long should I hold it and can I take money out early?’

(i) where applicable, whether there is a cooling off period or cancellation period for the PRIIP;

(ii) an indication of the recommended and, where applicable, required minimum holding period;

(iii) the ability to make, and the conditions for, any disinvestments before maturity, including all applicable fees and penalties, having regard to the risk and reward profile of the PRIIP and the market evolution it targets;

(iv) information about the potential consequences of cashing in before the end of the term or recommended holding period, such as the loss of capital protection or additional contingent fees;

(h) under a section titled ‘How can I complain?’, information about how and to whom a retail investor can make a complaint about the product or the conduct of the PRIIP manufacturer or a person advising on, or selling, the product;

(i) under a section titled ‘Other relevant information’, a brief indication of any additional information documents to be provided to the retail investor at the pre-contractual and/or the post-contractual stage, excluding any marketing material.

4.The Minister may by Regulations specify the details of the procedures used to establish whether a PRIIP targets specific environmental or social objectives.

5.In order to ensure consistent application of this Article, the Minister may make technical standards specifying:

(a) the details of the presentation and the content of each of the elements of information referred to in paragraph 3;

(b) the methodology underpinning the presentation of risk and reward as referred to in points (d) (i) and (iii) of paragraph 3; and

(c) the methodology for the calculation of costs, including the specification of summary indicators, as referred to in point (f) of paragraph 3.

In developing any technical standards the Minister may take into account the various types of PRIIPs, the differences between them and the capabilities of retail investors as well as the features of the PRIIPs so as to allow the retail investor to select between different underlying investments or other options provided for by the product, including where this selection can be undertaken at different points in time, or changed in the future.

Article 9

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

Article 10

1.The PRIIP manufacturer shall review the information contained in the key information document regularly and shall revise the document where the review indicates that changes need to be made. The revised version shall be made available promptly.

2.In order to ensure consistent application of this Article, the Minister may make technical standards specifying:

(a) the conditions for reviewing the information contained in the key information document;

(b) the conditions under which the key information document must be revised;

(c) the specific conditions under which information contained in the key information document must be reviewed or the key information document revised where a PRIIP is made available to retail investors in a non-continuous manner;

(d) the circumstances in which retail investors are to be informed about a revised key information document for a PRIIP purchased by them, as well as the means by which the retail investors are to be informed.

Article 11

1.The PRIIP manufacturer shall not incur civil liability solely on the basis of the key information document, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the requirements laid down in Article 8.

2.A retail investor who demonstrates loss resulting from reliance on a key information document under the circumstances referred to in paragraph 1, when making an investment into the PRIIP for which that key information document was produced, may claim damages from the PRIIP manufacturer for that loss in accordance with domestic law.

3.Elements such as ‘loss’ or ‘damages’ as referred to in paragraph 2 of this Article which are not defined shall be interpreted and applied in accordance with the applicable domestic law as determined by the relevant rules of private international law.

4.This Article does not exclude further civil liability claims in accordance with domestic law.

5.The obligations under this Article shall not be limited or waived by contractual clauses.

Article 12

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

SECTION III

Provision of the key information document

Article 13

1.A person advising on, or selling, a PRIIP shall provide retail investors with the key information document in good time before those retail investors are bound by any contract or offer relating to that PRIIP.

2.A person advising on, or selling, a PRIIP may satisfy the requirements of paragraph 1 by providing the key information document to a person with written authority to make investment decisions on behalf of the retail investor in respect of transactions concluded under that written authority.

3.By way of derogation from paragraph 1 and subject to sections 7(1) and 9 of, and Schedule 1 to, the Financial Services (Distance Marketing) Act 2006, a person selling a PRIIP may provide the retail investor with the key information document after conclusion of the transaction, without undue delay, where all of the following conditions are met:

(a) the retail investor chooses, on his own initiative, to contact the person selling a PRIIP and conclude the transaction using a means of distance communication;

(b) provision of the key information document in accordance with paragraph 1 of this Article is not possible;

(c) the person advising on or selling the PRIIP has informed the retail investor that provision of the key information document is not possible and has clearly stated that the retail investor may delay the transaction in order to receive and read the key information document before concluding the transaction;

(d) the retail investor consents to receiving the key information document without undue delay after conclusion of the transaction, rather than delaying the transaction in order to receive the document in advance.

4.Where successive transactions regarding the same PRIIP are carried out on behalf of a retail investor in accordance with instructions given by that retail investor to the person selling the PRIIP prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall apply only to the first transaction, and to the first transaction after the key information document has been revised in accordance with Article 10.

5.In order to ensure consistent application of this Article, the the Minister may make technical standards specifying the conditions for fulfilling the requirement to provide the key information document as laid down in paragraph 1.

Article 14

1.The person advising on, or selling, a PRIIP shall provide the key information document to retail investors free of charge.

2.The person advising on, or selling, a PRIIP shall provide the key information document to the retail investor in one of the following media:

(a) on paper, which should be the default option where the PRIIP is offered on a face-to-face basis, unless the retail investor requests otherwise;

(b) using a durable medium other than paper, where the conditions laid down in paragraph 4 are met; or

(c) by means of a website where the conditions laid down in paragraph 5 are met.

3.Where the key information document is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to retail investors upon request and free of charge. Retail investors shall be informed about their right to request a paper copy free of charge.

4.The key information document may be provided using a durable medium other than paper if the following conditions are met:

(a) the use of the durable medium is appropriate in the context of the business conducted between the person advising on, or selling, a PRIIP and the retail investor; and

(b) the retail investor has been given the choice between information on paper and in the durable medium, and has chosen that other medium in a way that can be evidenced.

5.The key information document may be provided by the means of a website that does not meet the definition of a durable medium if all of the following conditions are met:

(a) the provision of the key information document by means of a website is appropriate in the context of the business conducted between the person advising on, or selling, a PRIIP and the retail investor;

(b) the retail investor has been given the choice between information provided on paper and by means of a website and has chosen the latter in a way that can be evidenced;

(c) the retail investor has been notified electronically, or in written form, of the address of the website, and the place on the website where the key information document can be accessed;

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

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

6.For the purposes of paragraphs 4 and 5, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the person advising on or selling a PRIIP and the retail investor if there is evidence that the retail investor has regular access to the internet. The provision by the retail investor of an email address for the purposes of that business shall be regarded as such evidence.

CHAPTER III

MARKET MONITORING AND PRODUCT INTERVENTION POWERS

Article 15

1.*Omitted*

2.The GFSC shall monitor the market for insurance-based investment products which are marketed, distributed or sold in or from Gibraltar.

Article 16

Omitted

Article 17

1.The GFSC may prohibit or restrict the following in or from Gibraltar:

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

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

2.The GFSC may take the action referred to in paragraph 1 if it is satisfied on reasonable grounds that:

(a) an insurance-based investment product, or activity or practice gives rise to significant investor protection concerns or poses a threat to the orderly functioning and integrity of financial markets or the stability of whole or part of the financial system within Gibraltar;

(b) existing regulatory requirements under the law of Gibraltar applicable to the insurance-based investment product, or activity or practice do not sufficiently address the risks referred to in point (a) and the issue would not be better addressed by improved supervision or enforcement of existing requirements;

(c) the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the insurance-based investment product, or activity or practice;

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

3.The GFSC must not impose a prohibition or restriction under this Article unless, at least one month before the measure is intended to take effect, the GFSC has published details of its decision to impose the measure on its website in accordance with paragraph 5.

4.In exceptional cases where the GFSC considers it is necessary to take urgent action under this Article in order to prevent detriment arising from the insurance-based investment products, activities or practices referred to in paragraph 1, the GFSC may take action on a provisional basis if–

(a) all the criteria in this Article are met; and

(b) it is clearly established that delaying the action for one month would not adequately address the specific concern or threat.

The GFSC must not take any action on a provisional basis for a period exceeding three months.

5.The GFSC shall publish on its website notice of any decision to impose any prohibition or restriction referred to in paragraph 1. That notice shall specify details of the prohibition or restriction, a time after the publication of the notice from which the measures will take effect and the evidence upon which it is satisfied each of the conditions in paragraph 2 are met. The prohibition or restriction shall only apply in relation to action taken after the publication of the notice.

6.The GFSC shall revoke a prohibition or restriction if the conditions in paragraph 2 no longer apply.

7.The the Minister may by Regulations specify criteria and factors to be taken into account by the GFSC in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system within Gibraltar.

Those criteria and factors may include:

(a) the degree of complexity of an insurance-based investment product and the relation to the type of investor to whom it is marketed and sold;

(b) the degree of innovation of an insurance-based investment product, an activity or a practice;

(c) the leverage a product or practice provides;

(d) in relation to the orderly functioning and integrity of financial markets, the size or the notional value of an insurance-based investment product.

Article 18

Omitted

CHAPTER IV

COMPLAINTS, REDRESS, COOPERATION AND SUPERVISION

Article 19

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

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

(b) retail investors who have submitted a complaint in relation to the key information document receive a substantive reply in a timely and proper manner; and

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

Article 20

Omitted

Article 21

The data protection legislation within the meaning of the Data Protection Act 2004 applies to the processing of personal data for the purposes of this Regulation.

CHAPTER V

REPORTING OF INFRINGEMENTS

Articles 22 to 27

Omitted

Article 28

1.The GFSC must establish appropriate arrangements which enable any person to report an infringement or potential infringement of this Regulation to the GFSC.

2.Those arrangements must include–

(a) specific procedures for the receipt and investigation of reported infringements; and

(b) arrangements which treat as confidential information about the identity of both the person who reports an infringement and any individual who is allegedly responsible for an infringement, except where its disclosure is necessary for the purpose of any further investigations or subsequent judicial proceedings.

3.An employee of a person to which this Regulation applies who reports an infringement in accordance with this Article–

(a) is not to be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an

employee from reporting an infringement; and

(b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported an infringement.

4.An employee who has been subjected to a detriment contrary to paragraph 3 may present a complaint to the Employment Tribunal as if the reporting of an infringement was a protected disclosure within the meaning of Part IVA of the Employment Act.

Article 29

Omitted

CHAPTER VI

FINAL PROVISIONS

Article 30

Regulations

Any power to make regulations conferred on the Minister by this Regulation includes the power to–

(a) make any supplementary, incidental, consequential, transitional or saving provision which the Minister considers necessary or expedient; and

(b) make different provision for different purposes.

Article 31

Omitted

Article 32

1.The following are exempt from the obligations under this Regulation until 31st December 2026–

(a) the management company (as defined in regulation 3(1) of the Financial Services (UCITS) Regulations) of a UCITS;

(b) an authorised open-ended investment company (as defined in that regulation); and

(c) a person advising on, or selling, units of a UCITS.

2.When Gibraltar applies rules on the format and content of the key information document, as laid down in Chapter 5 of Part 3 of the Financial Services (UCITS) Regulations 2020, to non-UCITS funds offered to retail investors, the exemption laid down in paragraph 1 of this Article shall apply to management companies, investment companies and persons advising on, or selling, units of such funds to retail investors.

Article 33

Omitted

Article 34

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 1 January 2018.