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2021/0219 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

Each undertaking for collective investment in transferable securities (UCITS) must provide 'key investor information' in accordance with Directive 2009/65/EC[1]. The information on objectives and investment policy, risk and reward profile, charges, past performance and other practical details helps investors to understand the essential characteristics of the UCITS and to make informed investment decisions. Articles 78 to 82, and 94 of the Directive specify the main principles of the key investor information. Commission Regulation (EU) No 583/2010[2] lays down further rules on its content and format.

UCITS qualify as packaged retail and insurance-based investment products (PRIIPs) within the meaning of Regulation (EU) No 1286/2014[3], which requires that all PRIIPs be accompanied by a 'key information document'. The document contains information on the PRIIP's risk and reward profile, including the possible maximum loss of invested capital and appropriate performance scenarios, the costs retail investors have to bear when investing in it, and other details. Again, this information helps retail investors to understand the essential characteristics of the product and to make informed investment decisions. Commission Delegated Regulation (EU) 2017/653[4] lays down detailed rules on the presentation, content, review, revision and provision of the document. Delegated Regulation (EU) 2016/1904[5] lays down rules on product intervention.

Article 32 of Regulation (EU) No 1286/2014 provides for a transitional arrangement whereby management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS are temporarily exempted from the requirement to provide retail investors with a key information document. The arrangement currently applies until 31 December 2021.

This Directive is accompanied by two further measures. First, the Commission is proposing that the transitional arrangement in Regulation (EU) No 1286/2014 be extended to 30 June 2022. This will allow the time necessary to prepare for the end of the transitional arrangement and to implement the other measure (which involves amendments to Delegated

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1 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

2 Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (OJ L 176, 10.7.2010, p. 1).

3 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) (OJ L 352, 9.12.2014, p. 1.).

4 Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents (OJ L 100, 12.4.2017, p. 1).

5 Commission Delegated Regulation (EU) 2016/1904 of 14 July 2016 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council with regard to product intervention (OJ L 295, 29.10.2016, p. 11).

Regulation (EU) 2017/653) from 1 July 2022. The three measures are therefore synchronised in terms of application dates.

As things stand, as of 1 July 2022 retail investors in UCITS would receive both a key information document in accordance with Regulation (EU) No 1286/2014 and key investor information in accordance with Directive 2009/65/EC. It is desirable to avoid a situation where retail investors receive two different pre-contractual disclosure documents in respect of the same UCITS. This Directive ensures that a key information document drawn up, provided, revised and translated for a given UCITS in accordance with the Regulation is considered as satisfying the key investor information requirements of Directive 2009/65/EC.

This initiative is not part of the regulatory fitness programme (REFIT).

Consistency with existing policy provisions in the policy area

Delegated Regulation (EU) 2017/653 specifies the presentation and content of the key information document for PRIIPs, its standardised format, the methodology for presenting risk and reward and calculating costs, the conditions and minimum frequency for reviewing the information and conditions on providing the document to retail investors. The European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) jointly submitted draft amendments to the regulatory technical standards in the Regulation, including technical adjustments to facilitate the application of the rules to UCITS.

This proposal seeks to ensure that key information documents that comply with Regulation (EU) No 1286/2014 are considered as satisfying the requirements for key investor information for UCITS in Articles 78 to 82, and 94 of Directive 2009/65/EC.

Consistency with other Union policies

The Commission's top priority is to strengthen the EU economy and stimulate investment so as to create jobs in all 27 Member States, by creating a deeper single market for capital — or capital markets union (CMU). Better retail investor legislation can be expected to bring benefits in other policy areas where business-to-consumer transactions play an important role.

This proposal aims to avoid a situation where two different pre-contractual disclosure documents are made available to retail investors in respect of the same UCITS. The key information document will enable retail investors to compare the essential economic and legal characteristics of UCITS with those of other PRIIPs. As regards pre-contractual disclosure, manufacturers and persons advising on, or selling, UCITS will only have to comply with legal obligations under Regulation (EU) No 1286/2014. This proposal contributes to the development of more integrated capital markets by making it easier for retail investors, fund managers and, in consequence, invested companies to benefit from the single market.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

This proposal is based on Article 53(1) of the Treaty on the Functioning of the European Union, which is the legal basis for Directive 2009/65/EC.

Subsidiarity (for non-exclusive competence)

This proposal complies with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union (TEU). According to that principle, Union action may be taken only if the envisaged aims cannot be achieved by Member States acting alone.

Union intervention is needed to remove barriers to the internal market in financial services and products by introducing a uniform approach to disclosures relating to PRIIPs. The identified problem (two different pre-contractual disclosure documents for the same UCITS) can be resolved only at Union level, since any amendment to Directive 2009/65/EC must be made through a Commission proposal.

Proportionality

This proposal complies with the principle of proportionality, as set out in Article 5 TEU. The proposed measures are necessary to reduce the consequences of a parallel application of Directive 2009/65/EC and Regulation (EU) No 1286/2014.

This Union action is necessary to ensure the effective application of the PRIIPs rules by competent authorities and PRIIPs manufacturers, and the smooth operation of the internal market for investment funds. The proposal will reduce the compliance burden and costs for UCITS by removing duplication on pre-contractual disclosure, burdensome requirements, and unnecessary regulatory complexity and legal uncertainty.

Choice of instrument

The objective is to eliminate barriers by amending a Directive. Therefore, a Directive is the most appropriate instrument.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

***Ex post* evaluations/fitness checks of existing legislation**

This proposal is not accompanied by a separate impact assessment, as an impact assessment has already been produced for Regulation (EU) No 1286/2014, also covering UCITS. The proposal does not create new obligations for financial market participants.

The proposal promotes rights enshrined in the Charter of Fundamental Rights. The main objective is to strengthen consumer rights (Article 38 of the Charter) and facilitate the right to provide services in any Member State (Article 15(2) of the Charter).

4. BUDGETARY IMPLICATIONS

The proposal does not have a budgetary impact for the Commission.

5. OTHER ELEMENTS

Implementation plans and monitoring, evaluation and reporting arrangements

The Commission's review of Regulation (EU) No 1286/2014, as part of the upcoming Retail investment strategy, will consider among other the application of the rules laid down in the Regulation. It will be informed by a public consultation and discussions with the EBA, the ESMA, the EIOPA and the competent authorities of Member States.

- **Detailed explanation of the specific provisions of the proposal**

This proposal inserts a new Article 82a in Directive 2009/65/EC. The Article lays down in a clear, precise and unconditional manner that, where a key information document is drawn up, provided, revised and translated for a UCITS pursuant to Regulation (EU) No 1286/2014, it should be considered as satisfying the requirements applicable to key investor information for the purposes of that Directive.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) 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 Economic and Social Committee[6],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Article 78 of Directive 2009/65/EC of the European Parliament and of the Council[7] requires investment companies and management companies to draw up a short document containing key information about the essential characteristics of undertakings for collective investment in transferable securities (UCITS) offered to investors ('key investor information document' or 'KIID'), so that those investors are reasonably able to understand the nature and the risks of the UCITS concerned and, consequently, to take investment decisions on an informed basis.

(2) Regulation (EU) No 1286/2014 of the European Parliament and of the Council[8] requires manufacturers of packaged retail and insurance-based investment products (PRIIPs), before making such products available to retail investors, to draw up a key information document for that product in order to enable such retail investors to understand and compare the key features and risks of the PRIIP concerned ('key information document' or 'KID').

(3) UCITS also qualify as PRIIPs, for which a 'KID' is required pursuant to Regulation (EU) No 1286/2014. Article 32(1) of that Regulation, however, exempts management companies as defined in Article 2(1)(b) of Directive 2009/65/EC, investment companies as referred to in Article 27 thereof and persons advising on, or selling, units

[6] OJ C […], […], p. […].

[7] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

[8] 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) (OJ L 352, 9.12.2014, p. 1).

of UCITS from the obligations laid down in that Regulation, and thus from producing a 'KID', until 31 December 2021 ('transitional arrangement').

(4) Commission Delegated Regulation (EU) 2017/653[9] supplements Regulation (EU) No 1286/2014 by laying down regulatory technical standards with regard to the presentation, content and standard format of the KID, the methodology for the presentation of risk and reward and the calculation of costs, as well as the conditions and minimum frequency for reviewing the information contained in the KID and the conditions on providing the KID to retail investors.

(5) On [*OJ Please insert the date*], the Commission adopted Commission Delegated Regulation (EU) …/2021[10], amending Delegated Regulation (EU) 2017/653, *inter alia*, to make it easier for management companies, investment companies, and persons advising on, or selling, units of UCITS to make use of the presentation, content and standard format of the KID. The date of application of Delegated Regulation (EU) …/2021, however, has been set on 1 July 2022 to give those management companies, investment companies, and persons advising on, or selling, units of UCITS, sufficient time to prepare for the end of the transitional arrangement and thus for the obligation to produce a KID. Because the date of application of Delegated Regulation (EU) …/2021 has been set on 1 July 2022, and because it is necessary to ensure that the end of the transitional arrangement coincides with the date of application of Delegated Regulation (EU) …/2021, Regulation (EU) No 1286/2014 has been amended by Regulation (EU) ...../2021 of the European Parliament of the Council[11] to extend the transitional arrangement until 30 June 2022.

(6) The 'key investor information' required by Article 78 of Directive 2009/65/EC and the 'key information documents' required by Regulation (EU) No 1286/2014 cover essentially the same information requirements. It is therefore necessary to avoid that retail investors in PRIIPs interested in acquiring units of UCITS would receive, as of 1 July 2022, both documents for the same financial product. It should therefore be laid down that the KID is to be considered as satisfying the requirements applicable to the key investor information document required by Directive 2009/65/EC.

(7) Directive 2009/65/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In Directive 2009/65/EC, the following Article 82a is inserted:

"*Article 82a*

Key investor information provided through key information document

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9 Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents (OJ L 100, 12.4.2017, p. 1).

10 OJ C […], […], p. […].

11 Regulation (EU) ..../2021 of the European Parliament of the Council as regard the extension of the transitional arrangement for management companies, investment companies and persons on advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS (OJ L ....., dd/mm/jj, p. .....).

Member States shall ensure that where an investment company or, for any of the common funds it manages, a management company draws up, provides, revises and translates a key information document which complies with the requirements for key information documents laid down in Regulation (EU) No 1286/2014 of the European Parliament and of the Council*, competent authorities consider that key information document as satisfying the requirements applicable to key investor information as set out in Articles 78 to 82 and Article 94 of this Directive.

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* 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) (OJ L 352, 9.12.2014, p. 1).".

Article 2

1. By 30 June 2022, Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

   They shall apply those measures from 1 July 2022.

   When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. As soon as this Directive has entered into force, Member States shall ensure that the Commission is informed, in sufficient time for it to submit its comments, of any draft laws, regulations or administrative provisions which they intend to adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*