

DEUTSCHER DERIVATE VERBAND

– DDV –

And

EUROPEAN STRUCTURED INVESTMENT PRODUCTS ASSOCIATION

– EUSIPA –

Joint Position Paper

on the

**Proposal for a Regulation of the European Parliament and of the Council on key
information documents for investment products**

- COM(2012) 352 final, 2012/0169 (COD) –

BRUSSELS, 09 November 2012

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	3
II. GENERAL REMARKS	5
III. SPECIFIC REMARKS	6
ANNEX	12

I. EXECUTIVE SUMMARY

Unless stated otherwise, references to Articles relate to the corresponding Articles in the Draft Regulation (as defined below).

DDV and EUSIPA fully agree with the aim of providing investors with short, transparent and comparable pre-contractual information on key terms of investment products. At national level, a number of EU Member States have already introduced short form product information documents.

However, the European Commission's proposal for a Regulation of the European Parliament and of the Council on key information documents for investment products (the "**Draft Regulation**" or "**Regulation**") has a number of substantial shortcomings, mostly stemming from the fact that major conceptual questions have not been addressed and answered.

In our view, the following points are of particular importance:

1. **Objective of the KID**

The Draft Regulation does not clarify the concept underlying the key information document (the "**KID**") in terms of its general content standard and the relationship to other mandatory information documents. The lack of differentiation affects the entire set-up of the regulation.

2. **Responsibility for producing the KID**

The lack of an underlying well considered and calibrated concept also finds its expression in the current approach towards responsibility for producing the KID. In our view, the KID is mainly constructed as a sales document. Making the product manufacturer responsible for the production of a KID each time a product is offered to retail investors (or a retail investor) would not be appropriate, as it is the intermediary, not the manufacturer that is responsible for the distribution, and the distribution is not within the control of the manufacturer. Consequently, the KID should be embedded into the framework of the Markets in Financial Instruments Directive ("**MiFID**") and Insurance Mediation Directive ("**IMD**"), similar to the national regimes introduced in some EU Member States.

3. **Liability regime**

The proposed liability regime is unclear, and based on the notion that KIDs – like prospectuses – have to provide all relevant information to investors. The proposed reversal of burden of proof does not comply with general rules of evidence and is in contradiction to existing liability regimes of the Member States. The liability regime should thus be aligned with the current UCITS rules.

4. **Overlap with issue specific summary**

The KID has the same purpose as the issue specific summary introduced by the recently revised Prospectus Directive. As a consequence, and in order to avoid duplication of

information, only one of the documents should be required; at a minimum the KID should become the template for the issue specific summary.

5. **Content requirements**

Headings and specific content requirements are too specific for a Level 1 Regulation and have not been evaluated in all details for the whole PRIPs universe. There should only be general content requirements in the Regulation.

6. **Duration of exemption for UCITS**

There is no justification for the intended length of the exemption period for UCITS, especially given the fact that the UCITS KIID (the “**KIID**”) is generally presented as "point of reference" for the KID. Alternatively, securities under the prospectus regime should also be exempted for the same period of time, in light of equal treatment and given the existence of an issue specific summary in the prospectus having the same objectives as the KID.

7. **Definition of terms**

Generally, the key terms used in the Regulation have to be defined as clearly as possible to ensure practicability and create legal certainty – in the Draft Regulation, a number of the key terms lack such clarity.

8. **Updating requirement**

The review and updating requirement set out in Article 10 should be deleted, or at least be limited to the period in which the investment product is offered. Even leaving the conceptual foundation of a KID requirement aside, it seems unclear how this requirement could be constructed based on the proposed allocation of responsibilities.

II. GENERAL REMARKS

As expressed in previous position papers, DDV and EUSIPA fully agree with the fundamental objective of the proposed Regulation, providing investors with short, transparent and comparable pre-contractual information on key terms of investment products by introducing a new key information document. The introduction of the KID as a mandatory short information document for investors would undoubtedly help retail investors in making an informed investment decision.

However, we have strong concerns about the conceptual basis of the initiative. Those concerns are related to both, the overall scope of the initiative and the specific rules stipulated by the Regulation. For the latter, it is obvious that the European Commission has used the KIID for UCITS as a blue print and more or less proposes to fully transfer this approach to the whole PRIPs world.

However, there already are important conceptual differences between the scope of the prospectus requirement for UCITS, in which the KIID is embedded and which accordingly also defines the exact limits of the respective obligation, and the scope of the prospectus requirement for securities. By simply transferring the UCITS approach for important conceptual issues, the European Commission failed to make a thorough assessment of the conceptual foundations. Accordingly, important aspects have not been addressed and answered.

Very importantly, for example, the KID as a short form *key information document* cannot fully replace the information being provided to investors by the prospectus. This concept would be in contradiction to the main underlying idea, namely to provide the investor with a comprehensive overview of the respective investment product.

In addition, the key information document pursues similar goals to the issue specific prospectus summary under the revised Prospectus Directive. As a consequence, and in order to avoid duplication of information, the KID should count towards the issue specific summary.

III. SPECIFIC REMARKS

1. Objective of the KID

The Draft Regulation does not clarify the concept underlying the KID in terms of its general content. To start with, there is lack of clarity if only the product itself or also the product manufacturer need to be described in the KID. Even more importantly, the proposed rules do not address the required depth of information to be given in the KID (the general content standard); accordingly, the relationship between the KID in its proposed form and other mandatory information documents (prospectuses including the issue specific summary and product related information provided by distributors under the MiFID and IMD) also remains unclear. This lack of differentiation affects the entire concept of the Regulation.

A KID generally has the aim to provide short and standardised information. In contrast to this, the purpose of securities prospectuses is to provide full disclosure about the securities and the issuer. This distinction gets blurred if KIDs – like prospectuses – would be required to provide all information necessary for an informed investment decision. However, clause 3.4.3 of the Explanatory Memorandum of the Draft Regulation states “*that retail investors should not be required to read other documents to be able to understand the key features of the investment product and take an informed investment decision*”. This objective cannot be achieved by a key information document as it is by its nature meant to be a “short” information document. Moreover, it would be in contradiction to the current approach – also in respect to liability – that an investment decision should only be made on the basis of the full prospectus which contains all relevant information necessary for an investment decision. There is no doubt that a short document – as a KID – containing only the key facts cannot provide investors with the same level of details.

Accordingly, the Regulation should use a *numerus clausus* approach and, thus, explicitly describe the aim and the exhaustive contents of a KID. In this respect, a KID should

- (i) facilitate the investment decision but should not be regarded as the only basis in this respect; by their very nature, KIDs are too short for an “all relevant information” standard (as applicable for prospectuses) and such requirement would be an inherent contradiction to their objective to be “short and clear”;
- (ii) contain the essential information regarding the product, but not regarding the product manufacturer itself (this would again contradict the objective to be “short and clear”); and
- (iii) only contain information explicitly required by the specific content rules (Article 8 (3) requiring the inclusion of “other information where it is necessary for the retail investor” would in fact force the inclusion of “all relevant information” for investors, as in prospectuses, and would accordingly prevent KIDs from being short and clear).

For this reason, we recommend to introduce a new Article 4 (g) as proposed under **Annex A. 4.**

Moreover, as mentioned above, the fall-back clause in Article 8 (3) of the Draft Regulation should be amended (see our proposal in **Annex A. 7**), as this rule could only be understood as introducing an “all relevant information” standard for the content of KIDs, requiring the inclusion of additional information not explicitly mentioned in the detailed content provisions. Accordingly, there would be no legal certainty for product manufacturers regarding the required content of a KID. Such clause would also be very problematic in connection with the proposed reversal of the burden of proof set out in Article 11 (2).

2. Responsibility for producing the KID

- a) The lack of an underlying well considered and calibrated concept also finds its expression in the proposed approach towards responsibility. This would result in a number of serious problems, particularly as regards their practical application:
 - (i) The proposed rules raise the question if the KID has to be produced by the product manufacturer irrespective of an intended retail offering or not (currently Article 5 of the Draft Regulation seems to require the production of a KID in any case, even if selling to retail investors is not intended).
 - (ii) Product manufacturers would not have control over the use of their KIDs. Accordingly, the KIDs could be handed out by distributors to investor groups not envisaged as target buyer of the product by the respective product manufacturer. For example, information drafted in connections with products intended by product manufacturers to be offered to “high networth individuals” may not be suitable for the offering to other retail investors that are less experienced and sophisticated.
 - (iii) The proposed approach towards responsibility would be even more problematic in relation to the updating requirement set out in Article 10 (see number 8 below). In some cases, product manufacturers are expecting a distribution of their products to retail investors for a limited period of time. Accordingly, following the general responsibility concept underling the Draft Regulation, the manufacturer would not be obliged to update the KID at a later stage. If, some time thereafter, a distributor decides to distribute this investment product to retail investors, the KID could be used for this purpose at a time when it has become outdated already without the manufacturer even being aware of its use. Product manufacturers simply do not have the control over the distribution of their products during the entire life-cycle of an investment product.
- b) From a practical point of view and also for the sake of legal certainty, the responsibility for producing the KID should thus be taken over by distributors rather than product manufacturers, similar to the national regimes introduced in some EU Member States (e. g. Germany), and consequently the KID should be embedded into the MiFID/IMD framework. When drafting conditions for the protection of individual investors to which products shall be distributed by the distributor, it is simply appropriate to give the responsibility for producing such documents to distributors and not to manufacturers. Moreover, the implementation of the rules

regarding KIDs in the MiFID and IMD respectively would be in line with the general regulatory approach to distinguish between rules attaching to the product itself and the regulation of the distribution / marketing of the product.

- c) For these reasons and to avoid any uncertainties, the rules in the Draft Regulation should be embedded in the current regulatory regime. Thus, MiFID and IMD should be amended as proposed in **Annex B and C**.

Within the MiFID, a new Article 19a should be introduced, containing all relevant provisions on content, format and distribution of KIDs (see **Annex B. 2**). Also, in order to transfer the new rules into the MiFID framework, a new definition of “investment products” should be inserted into Article 4 (see **Annex B. 1**).

Materially the same requirements should be introduced into the IMD (see **Annex C**).

- d) If the responsibility for the production of KIDs should still remain with product manufacturers, at least a clear and objective definition for a “*person who makes changes to an existing investment product*” (Article 4 (b) ii)) should be inserted into the Regulation. Under the proposed rules, it would not be clear if any change would be relevant for turning someone into a product manufacturer or if a certain threshold would have to be exceeded.

In our view, all changes made to an existing investment product should be relevant, and should shift responsibility and liability for such product from the original product manufacturer to the person making the changes. Article 4 (b) ii) (see **Annex A. 3**) and Article 8 (5) (see **Annex A. 8**) should be amended accordingly.

If our proposed approach to implement the KID rules in the MiFID and IMD should not be taken up, it is particularly essential to clarify that no key information document has to be drawn up if a specific investment product is not intended by the product manufacturer for sale to retail investors (see our amendment in respect to Article 5 in **Annex A. 5**).

3. Liability regime

As set out under section 1 in this position paper, the Draft Regulation – at least implicitly – qualifies KIDs as stand-alone documents which have to give investors all information necessary for an informed investment decision. Also as set out above, this is not a viable approach for defining the general content standard for KIDs. However, the proposed liability regime, which differs from the current liability regime for UCITS KIIDs, only makes sense if this content standard applies. If KIDs are not meant to provide investors with all information required for an investment decision, it is not appropriate to base full liability of the product manufacturer vis-à-vis investors relying solely on a KID for their investment, but only restricted liability based on the standard provided for within the UCITS Directive, particular where the information within a KID deviates from that in the relevant prospectus or other legally binding information.

In addition, the proposed content standard and liability regime would undermine the regime of the amended Prospectus Directive, as claims could be based on the KID

alone, even if the prospectus did contain the full set of information required for an informed investment decision.

Accordingly, the liability regime of the Regulation should be aligned with that of the current UCITS rules. There should only be liability for investment product manufacturers in case of inconsistencies between the content of the KID and the content of other legally binding information documents (prospectus and/or product terms).

Furthermore, the reversal of the burden of proof as foreseen by Article 11 (2) of the Draft Regulation would not be appropriate. It would require product manufacturers to prove the absence of omissions or errors – which are negative facts and therefore almost impossible to prove.

Such reversal of the burden of proof would also be in contradiction to civil law principles of Member States. For example under German law, a reverse burden of proof is acknowledged by the courts and provisions of German law only in cases where it is nearly impossible for the claimant to fulfill its burden of proof because of superior knowledge of the defendant, so that a lack of such reversal would give an highly unfair advantage to the defendant and extremely limit the claimant's right to claim damage. It can hardly be argued that this is the case in the circumstances described by Article 11.

It would also practically mean that all investors which have suffered a loss through their investment, even if simply caused by the occurrence of market risk, and which can demonstrate they had studied the KID before their investment decision, could evoke the liability clause; in all such cases, product manufacturers would have to prove the absence of omissions and errors, and would thus be subject to a material risk of unjustified, but ultimately successful investor claims.

Finally, in case the requirement to draw up a KID in any case (as currently set out in Article 5) should not be limited to cases in which the sale of the specific investment product to specific investors took place in agreement with the product manufacturer. In this respect, a limitation of the product manufacturer's liability has to be inserted for cases in which distributors sell the product without such agreement. An additional requirement for a permission by the manufacturer for the distributor to provide the KID to retail investors could avoid legal uncertainties (see proposal for amendment of Article 11 (1) in **Annex A. 9** and Article 12 (1) in **Annex A. 10**).

4. Overlap with issue specific summary

The KID has the same aim as the issue specific summary introduced by the recently revised Prospectus Directive. In case our proposed approach towards responsibility should not be taken up, it would not be appropriate to require both the production of a KID and of an issue specific prospectus summary according to the revised Prospectus Directive, as both would have the same basic objective.

To avoid duplication of information and unnecessary administrative burdens which are cost and time consuming without any added value for the investor we would then strongly suggest the insertion of an exemption of the duty to produce an issue specific summary in cases where a KID is provided to investors (see our proposal for an amendment of Article 3 (1) as set out in [Annex A. 1](#)).

At the very least, the KID content requirements should be mirrored in the provisions for the issue specific summary.

5. Content requirements

Headings and specific content requirements set out in Article 8 are far too specific for a Level 1 regulation. It is obvious that the proposed specific rules have not been evaluated for the whole PRIPs universe (which is acknowledged by the Commission in Article 8 (5)).

Accordingly, there should only be general requirements in the Regulation. In a second step, precise content requirements should be set on the basis of delegated acts, distinguishing – where necessary – between the various types of investment products.

Article 8 (2) should be amended accordingly (see our proposal for amendment in [Annex A. 6](#)).

6. Duration of exemption for UCITS

An exemption period of at least five years for UCITS – as foreseen by Article 24 of the Draft Regulation – is excessive and would lead to unequal treatment. This would also be in contradiction to the general aim of the Regulation to achieve a level playing field between retail investment products. According to this exemption, UCITS would not have to comply with the content requirements and would also not fall under the proposed stricter liability regime for the next five years. In our view there is no justification for such an exemption for UCITS, especially given that the UCITS KIID is generally presented as a "point of reference" for the KID.

Therefore, the exemption for UCITS in Article 24 should at least be restricted to a period of two years after the entry into force of the Regulation (see [Annex A. 12, Option 1](#)).

Alternatively, securities under the prospectus regime could also be exempted for the same period of time, in light of equal treatment and given the existence of an issue specific summary in the prospectus having the same objectives as the KID (see [Annex A. 12, Option 2](#)).

7. Definition of terms

Generally, the key terms used in the Draft Regulation need to be defined as precisely as possible to ensure that they are useful in practical context and create legal certainty. For example, the proposed definition of "investment product" is very vague.

If our approach to implement the KID rules in MiFID and IMD should not be taken up, both legal certainty and consistency of the whole PRIPs concept as regards the applicable product universe could be increased by amending Article 4 (a) so that it principally reverses to the product universes covered by MiFID and the IMD (see proposal for amendment as set out in **Annex A. 2**).

Moreover, there is no clear definition of the term “*derivative*” in Article 2 (d). This would lead to significant uncertainty about the scope of the Regulation. In light of the extensive responsibility and liability regime set out in the Draft Regulation, this is not acceptable. Furthermore, such uncertainty about the scope bears the risk of not reaching the Regulation's objective to create a level playing field for investment products. Therefore, it is essential that the Regulation sets out a clear definition of “*derivative*” as well as of other key terms used in the Regulation.

8. Updating Requirement

The review and updating requirement set out in Article 10, which is to be specified by way of delegated acts, is much more far-reaching than similar obligations under other existing regimes. In our view, such requirement should completely be deleted, or at least be limited to the period in which the investment product is offered to investors. In this respect it should be noted that the KID's objective is to help investors in making an informed investment decision and this objective can only be achieved as long as such investment decisions can be made, i.e. during the offer period. Any obligations subsequent to this aim should not be subject to the Regulation.

In case this requirement should not be deleted, in terms of its duration the requirement to update KIDs should at least be limited to the end of the individual sales situation. In case of any new information or changes subsequent to the final sales activities, investors should not be entitled to any claims arising from the fact that the KID has not been updated after the relevant date of sale.

Moreover, a clear and objective definition of when “*changes need to be made*” is essential for a limited and predictable liability of the product manufacturers.

In light of the aforementioned, the requirement as set out in Article 13 (5) (d) to make available all revised versions to the retail investor in case of providing the KID by means of a website should be completely deleted in any case (see **Annex A. 11**). This holds also true in case a general update requirement should remain in the Regulation as such requirement would not be practical and appropriate.

ANNEX

A. Proposal for amendments of the draft Regulation on key information documents for investment products

1. Article 3 (1): *to be amended*

“Where investment product manufacturers subject to this Regulation are also subject to Directive 2003/71/EC, this Regulation and Directive 2003/71/EC shall both apply. **In case a key information document pursuant to this Regulation has been made available by the investment product manufacturer the requirement to produce a summary of the individual issue regarding product related information according to Article 24 (3) of Regulation (EC) No 809/2004 as amended by Regulation (EU) No 486/2012 shall not apply.**”

2. Article 4 (a): *to be amended*

“(a) ‘Investment product’ means

- (i) financial instruments as defined in Article 4 no. 17 of the Directive 2004/39/EC except shares, other equity securities and such financial instruments with a rate of return that is determined in relation to an interest rate; and
- (ii) ‘investment insurance contract’ meaning insurance contracts which are subject to Directive 2002/92/EC which offer a surrender value that is wholly or partially exposed, directly or indirectly, to market fluctuations.”

3. Article 4 (b) ii: *to be amendment*

“any natural or legal person who makes **any** changes to an existing investment product, **especially** by altering its risk and reward profile or the costs associated with an investment in the investment product;”

4. Article 4 (g): *new*

“key information’ means the essential characteristics and risks of the investment product, indicating the name of the investment product manufacturer but excluding all other information relating to the investment product manufacturer.”

5. Article 5: *to be amendment*

“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. **If a specific investment product is not intended by the investment product manufacturer for sale to retail investors, no key information document has to be drawn up.**”

6. Article 8 (2): *to be deleted and replaced*

“The key information document shall include information on the following elements:

- (a) the identification of the investment product and its manufacturer;**
- (b) the nature of the investment product and its objectives, including how it is proposed these will be achieved;**
- (c) the risk and reward profile of the investment product;**
- (d) costs associated with an investment in the investment product;**
- (e) past or possible future performance of the investment product as appropriate.”**

7. Article 8 (3): *to be deleted and replaced*

“The key information document shall only include information items which are explicitly specified in this Regulation and/or delegated acts in accordance with Article 23.”

8. Article 8 (5): *to be amended*

“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. [...]“

9. Article 11 (1): *to be amended*

“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, **only if the key information document was misleading, inaccurate or inconsistent with the relevant parts of the prospectus or other terms and conditions of the product.**”

10. Article 12 (1): *to be amended*

“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. **Without the permission of the investment product manufacturer to provide the key information document, a person selling an investment product to investors has the sole responsibility and liability for any claims arising in relation thereto.**”

11. Article 13 (5): *to be deleted*

~~5. The key information document may be provided by the means of a website if the key information document is addressed personally to the retail investor or if the following conditions are met:~~

- ~~(a) the provision of the key information document by means of a website is appropriate in the context of the business conducted between the person selling an investment product and the retail investor;~~
- ~~(b) the retail investor has consented to the provision of the key information document by means of a website;~~
- ~~(c) the retail investor has been notified electronically of the address of the website, and the place on the website where the key information document can be accessed;~~
- ~~(d) where the key information document has been revised in accordance with Article 10 all revised versions shall also be made available to the retail investor;~~
- ~~(e) it is ensured that the key information document remains accessible on the website for such period of time as the retail investor may reasonably need to consult it.~~

12. Article 24: to be amended

Option 1:

“Management companies and investment companies referred to under Article 2 (1) and Article 27 of Directive 2009/65/EC and persons selling units of UCITS as defined in Article 1 (2) of that Directive are exempt from the obligations under this Regulation until [OJ: please insert the date **52** years after the entry into force].

Option 2:

“Management companies and investment companies referred to under Article 2 (1) and Article 27 of Directive 2009/65/EC, ~~and~~ persons selling units of UCITS as defined in Article 1 (2) of that Directive **and issuers offering investment products requiring the publication of an issue specific summary pursuant to Article 24 (3) of Regulation (EC) No 809/2004 as amended by Regulation (EU) No 486/2012** are exempt from the obligations under this Regulation until [OJ: please insert the date 5 years after the entry into force].

B. Proposal for amendments of the Markets in Financial Instruments Directive

1. Article 4: *new paragraph 1 no. 32*

“32) ‘Investment products’ means financial instruments except shares, other equity securities and such financial instruments with a rate of return that is determined in relation to an interest rate.”

2. Article 19a: *new*

- “Article 19a**
Provision of the key information document
1. An investment firm selling an investment product to retail clients shall provide them with the key information document in good time before the conclusion of a transaction relating to the investment product.
 2. By way of derogation from paragraph 1, an investment firm selling an investment product may provide the retail client with the key information document immediately after the conclusion of the transaction where:
 - (a) the retail client 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 investment firm selling the investment product has informed the retail client of this fact.
 3. Where successive transactions regarding the same investment product are carried out on behalf of a retail client in accordance with instructions given by that client to the investment firm, selling the investment product prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall only apply to the first transaction.
 4. The key information document shall be accurate, fair, clear and not misleading.
 5. The key information document shall be a stand-alone document, clearly separate from marketing materials.
 6. The key information document shall be drawn up as a short document.

Proposal for a new Art. 19a MiFID:

7. The title 'Key Information Document' shall appear prominently at the top of the first page of the key information document. An explanatory statement shall appear directly underneath the title.
8. The key information document shall include information about the following elements:
 - (a) the identification of the investment product and its manufacturer;
 - (b) the nature of the investment product and its objectives, including how it is proposed these will be achieved;
 - (c) the risk and reward profile of the investment product;
 - (d) costs associated with an investment in the investment product;
 - (e) past or possible future performance of the investment product as appropriate.
9. The key information document shall only include information items which are explicitly specified in this Directive and/or delegated acts in accordance with paragraph 15.
10. The information referred to in paragraph 8 shall be presented in a common format including the common headings and following the standardised order set out in paragraph 8, so as to allow for comparison with the key information document for any other investment product. The key information document shall prominently display a common symbol to distinguish the document from other documents.

Proposal for a new Art. 19a MiFID:

11. The investment firm selling an investment product shall provide the key information document to retail clients free of charge. The Commission shall be empowered to adopt delegated acts in accordance with paragraph 15 specifying the details in respect to the media of the key information document.
12. Marketing communications that contain specific information relating to the investment product shall not include any statement that contradicts the information contained in the key information document or diminishes the significance of the key information document. Marketing communications shall indicate that a key information document is available and supply information on how to obtain it.
13. The Commission shall be empowered to adopt
 - (a) delegated acts in accordance with paragraph 15 specifying the conditions for fulfilling the requirement to provide the key information document in good time as laid down in paragraph 1; and the method and the time limit for the provision of the key information document in accordance with paragraph 2;
 - (b) delegated acts in accordance with paragraph 15 specifying the details for drawing up a short document referred to in paragraph 6, the details of the text of the explanatory statement referred to in paragraph 7, the details of the presentation and the content of each of the elements of information referred to in paragraph 8, the presentation and details of the other information the key information document shall include within the key information document as referred to in paragraph 9, and the details of the common format and the common symbol referred to in paragraph 10; the Commission shall take into account the differences between investment products and the capabilities of retail clients as well as the features of investment products that allow the retail client 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; and
 - (c) delegated acts in accordance with paragraph 15 specifying the details in respect to the media of the key information document referred to in paragraph 11.

Proposal for a new Art. 19a IMD:

14. The European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) shall develop draft regulatory standards to determine:

- (a) the methodology underpinning the presentation of risk and reward as referred to in point (e) of paragraph 8 of this Article and
- (b) the calculation of costs as referred to in point (f) of paragraph 8 of this Article.

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

Power is conferred on the Commission to adopt the regulatory technical standards in accordance with the procedure set out in Articles 10 to 14 of Regulation (EU) No 1093/2010, Articles 10 to 14 of Regulation 1094/2010 and Articles 10 to 14 of Regulation (EU) No 1095/2010.

15. The Commission shall be empowered to adopt delegated acts specifying certain conditions set out in this Article.

- (a) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this paragraph.
- (b) The power to adopt delegated acts referred to in paragraph 13 shall be conferred on the Commission for a period of [4 years] from the entry into force of this Article. 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.
- (c) The delegation of powers referred to in paragraph 13 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.
- (d) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- (e) A delegated act adopted pursuant to paragraph 13 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.

A. Proposal for amendments of Insurance Mediation Directive

1. Article 2: *new paragraph 1a*

“(1b) ‘investment insurance contract’ means insurance contracts offering a surrender value that is wholly or partially exposed, directly or indirectly, to market fluctuations;”

2. Article 12a: *new*

“Article 12a

Provision of the key information document

1. An insurance intermediary selling an investment insurance contract to customers shall provide them with the key information document in good time before the conclusion of a transaction relating to the investment insurance contract.
2. By way of derogation from paragraph 1, an insurance intermediary selling an investment insurance contract may provide the customer with the key information document immediately after the conclusion of the transaction where:
 - (a) the customer 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 insurance intermediary selling the investment insurance contract has informed the customer of this fact.

Proposal for a new Article 12a IMD:

3. Where successive transactions regarding the same investment insurance contract are carried out on behalf of a customer in accordance with instructions given by that customer to the insurance intermediary, selling the investment insurance contract prior to the first transaction, the obligation to provide a key information document under paragraph 1 shall only apply to the first transaction.
4. The key information document shall be accurate, fair, clear and not misleading.
5. The key information document shall be a stand-alone document, clearly separate from marketing materials.
6. The key information document shall be drawn up as a short document.
7. The title 'Key Information Document' shall appear prominently at the top of the first page of the key information document. An explanatory statement shall appear directly underneath the title.

Proposal for a new Article 12a IMD:

8. The key information document shall include information about the following elements:
 - (a) the identification of the investment insurance contract and its manufacturer;
 - (b) the nature of the investment insurance contract and its objectives, including how it is proposed these will be achieved;
 - (c) the risk and reward profile of the investment insurance contract;
 - (d) costs associated with an investment in the investment insurance contract;
 - (e) past or possible future performance of the investment insurance contract as appropriate.
9. The key information document shall only include information items which are explicitly specified in this Directive and/or delegated acts in accordance with paragraph 15.
10. The information referred to in paragraph 8 shall be presented in a common format including the common headings and following the standardised order set out in paragraph 8, so as to allow for comparison with the key information document for any other investment insurance contract. The key information document shall prominently display a common symbol to distinguish the document from other documents.
11. The insurance intermediary selling an investment insurance contract shall provide the key information document to customers free of charge. The Commission shall be empowered to adopt delegated acts in accordance with paragraph 15 specifying the details in respect to the media of the key information document.
12. Marketing communications that contain specific information relating to the investment insurance contract shall not include any statement that contradicts the information contained in the key information document or diminishes the significance of the key information document. Marketing communications shall indicate that a key information document is available and supply information on how to obtain it.

Proposal for a new Art. 12a IMD:

13. The Commission shall be empowered to adopt
- (a) delegated acts in accordance with paragraph 15 specifying the conditions for fulfilling the requirement to provide the key information document in good time as laid down in paragraph 1; and the method and the time limit for the provision of the key information document in accordance with paragraph 2;
 - (b) delegated acts in accordance with paragraph 15 specifying the details for drawing up a short document referred to in paragraph 6, the details of the text of the explanatory statement referred to in paragraph 7, the details of the presentation and the content of each of the elements of information referred to in paragraph 8, the presentation and details of the other information the key information document shall include within the key information document as referred to in paragraph 9, and the details of the common format and the common symbol referred to in paragraph 10; the Commission shall take into account the differences between investment insurance contracts and the capabilities of retail clients as well as the features of investment insurance contracts that allow the retail client 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; and
 - (c) delegated acts in accordance with paragraph 15 specifying the details in respect to the media of the key information document referred to in paragraph 11.
14. The European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) shall develop draft regulatory standards to determine:
- (a) the methodology underpinning the presentation of risk and reward as referred to in point (e) of paragraph 8 of this Article and
 - (b) the calculation of costs as referred to in point (f) of paragraph 8 of this Article.

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

Power is conferred on the Commission to adopt the regulatory technical standards in accordance with the procedure set out in Articles 10 to 14 of Regulation (EU) No 1093/2010, Articles 10 to 14 of Regulation 1094/2010 and Articles 10 to 14 of Regulation (EU) No 1095/2010.”

Proposal for a new Art. 12a IMD:

15. The Commission shall be empowered to adopt delegated acts specifying certain conditions set out in this Article.
- (a) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this paragraph.
 - (b) The power to adopt delegated acts referred to in paragraph 13 shall be conferred on the Commission for a period of [4 years] from the entry into force of this Article. 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.
 - (c) The delegation of powers referred to in paragraph 13 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.
 - (d) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
 - (e) A delegated act adopted pursuant to paragraph 13 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.

* * *