

Law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products

Law of 17 April 2018 implementing 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) and amending the Law of 17 December 2010 relating to undertakings for collective investment, as amended:

- by the Law of 15 December 2019 amending:
 1. with a view to transposing Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs)
 - a) the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
 - b) the Law of 13 July 2005 concerning the activities and supervision of institutions for occupational retirement provision, as amended;
 - c) the Law of 7 December 2015 on the insurance sector, as amended;
 2. the Law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products.

(Mem. A 2019, No 859)

- the Law of 25 February 2022 amending:
 - 1° the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
 - 2° the Law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products, as amended;
 - 3° the Law of 16 July 2019 implementing the Regulations on EuVECA, EuSEF, MMF, ELTIF and STS securitisation;

with a view to transposing Directive (EU) 2021/2261 of the European Parliament and of the Council of 15 December 2021 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), and implementing:

- 1° Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP);
- 2° Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector;
- 3° Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088;
- 4° Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis;
- 5° Regulation (EU) 2021/2259 of the European Parliament and of the Council of 15 December 2021 amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS.

(Mém. A 2022, No 82)

Art 1.

The Commission de Surveillance du Secteur Financier (hereinafter, the "CSSF") shall be the competent authority in Luxembourg responsible for ensuring compliance with 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 (hereinafter, "Regulation (EU) 1286/2014").

By way of derogation from the first subparagraph, the Commissariat aux assurances (hereinafter, the "CAA") shall be the competent authority in Luxembourg to ensure compliance with Regulation (EU) 1286/2014 by the entities subject to its supervision.

Art. 2.

Investment companies in risk capital and undertakings for collective investment, other than UCITS, shall be authorised to draw up a document containing key information for investors within the meaning of Part V, Chapter 21, Section C of the Law of 17 December 2010 relating to undertakings for collective investment, as amended. This document shall include a clear indication that said investment company in risk capital or said undertaking for collective investment which draws up the document containing key information for investors is not a UCITS covered by 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).

Where the option referred to in the first subparagraph is used, management companies, investment companies and persons that sell or provide advice on units/partnership interests of these undertakings for collective investment or investment companies in risk capital shall be exempted from the obligations imposed under Regulation (EU) 1286/2014 until "31 December 2022"¹.

Art. 3.

The CSSF and the CAA may require the ex ante notification of the key information document by the manufacturer of a packaged retail and insurance-based investment product (hereinafter, "PRIIP") or the person selling a PRIIP to its competent authority.

Art. 4.

(1) For the purposes of application of Regulation (EU) 1286/2014 and of this law, the CSSF and the CAA shall be given all supervisory and investigatory powers that are necessary for the exercise of their respective duties within the limits set in that regulation.

Their powers include the right to:

1. access any document and any data in any form, and to receive or take a copy thereof;
2. request information from any person and, if necessary, to summon and question any person;
3. carry out on-site inspections or investigations with respect to persons subject to their respective supervision;
4. require the cessation of any practice that is contrary to the provisions of Regulation (EU) 1286/2014, this law and their implementing measures;
5. impose temporary prohibition of professional activity in the financial or insurance sector on persons subject to their prudential supervision, as well as members of the management body, employees and agents linked to these persons;
6. adopt any measure necessary to ensure that the persons subject to their supervision continue to comply with the requirements of Regulation (EU) 1286/2014, this law and their implementing measures;
7. refer information to the State Prosecutor for criminal prosecution.

(2) The processing of personal data carried out pursuant to Regulation (EU) 1286/2014 and this law shall be in compliance with the Law of 2 August 2002 on the protection of persons with

¹ Law of 25 February 2022

regard to the processing of personal data, as amended.

Art. 5.

- (1) The CSSF and the CAA shall have the power to impose the administrative sanctions and other administrative measures referred to in paragraph 2 for infringements of Article 5(1), Articles 6 and 7, Article 8(1) to (3), Article 9, Article 10(1), Article 13(1), (3) and (4) and Articles 14 and 19 of Regulation (EU) 1286/2014, as well as for infringements of the first subparagraph of Article 2 and Article 3 of this law.
- (2) For the cases set out in paragraph 1, the CSSF and the CAA may impose, in accordance with their respective competences:
 1. an order prohibiting the marketing of a PRIIP;
 2. an order suspending the marketing of a PRIIP;
 3. a public warning which indicates the person responsible for, and the nature of, the infringement;
 4. an order prohibiting the provision of a key information document which does not comply with the requirements of Articles 6, 7, 8 or 10 of Regulation (EU) 1286/2014 and requiring the publication of a new version of a key information document;
 5. administrative fines:
 - a) in the case of a legal entity:
 - i) of up to EUR 5,000,000, or up to 3% of the total annual turnover of that legal person according to the last available financial statements approved by the management body; or
 - ii) of up to twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;
 - b) in the case of a natural person:
 - i) of up to EUR 700,000; or
 - ii) of up to twice the amount of the profits gained or losses avoided because of the infringement where those can be determined.

Where the legal person referred to in the first subparagraph of point (5), letter (a) is a parent undertaking or a subsidiary of the parent undertaking which is required to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, the relevant total annual turnover shall be the total annual turnover according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

- (3) The CSSF and the CAA may impose an administrative fine of EUR 250 to EUR 250,000 on those who obstruct the exercise of their supervisory and investigatory powers, who do not follow up on their orders given pursuant to Article 4, or who have knowingly given them inaccurate or incomplete information following requests under Article 4 or who do not comply with their requirements under Article 4.
- (4) The CSSF and the CAA shall apply the administrative sanctions and measures referred to in paragraphs 2 and 3 taking into account all relevant circumstances including, where appropriate:
 1. the gravity and duration of the infringement;
 2. the degree of responsibility of the person responsible for the infringement;
 3. the impact of the infringement on retail investors' interests;
 4. the cooperative behaviour of the person responsible for the infringement;
 5. any previous infringements by the person responsible for the infringement;

6. measures taken after the infringement by the person responsible for the infringement to prevent its repetition.
- (5) Where the CSSF and the CAA have imposed one or more administrative sanctions or measures in accordance with paragraph 2, the CSSF and the CAA may issue or may require the PRIIP manufacturer or person advising on, or selling, the PRIIP to issue a direct communication to the retail investor concerned, giving the retail investor information about the administrative sanction or measure, and informing the retail investor where to lodge complaints or submit claims for redress.

Art. 6.

The decisions taken by the CSSF or the CAA pursuant to this law or to Regulation (EU) 1286/2014 may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the merits of the case. The case shall be filed within one month, or else shall be time-barred.

Art. 7.

- (1) The CSSF and the CAA shall publish on their respective websites, in accordance with the arrangements laid down in Article 29 of Regulation (EU) 1286/2014, any decision to impose an administrative sanction or measure against which there is no appeal and which has been imposed due to an infringement of Article 5(1) of this law, without undue delay, after the person subject to that decision has been notified thereof.
- (2) The CSSF and the CAA shall ensure that any decision that is published in accordance with Article 29 of Regulation (EU) No 1286/2014 remains accessible on their respective websites for a period of five years after its publication.

Personal data contained in the publications referred to in the first subparagraph shall remain on the website for a period not exceeding 12 months.

Art. 8.

The last subparagraph of Article 161(1) of the Law of 17 December 2010 relating to undertakings for collective shall be deleted.

Art. 9.

Reference to this law shall be made as follows:

“Law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products”.