

25 APRIL 2014

ROYAL DECREE ON CERTAIN INFORMATION OBLIGATIONS FOR THE MARKETING OF FINANCIAL PRODUCTS TO
RETAIL CLIENTS

(Belgian Official Gazette, 12 June 2014)

(Unofficial consolidated text)

Last update:

Royal Decree of 23 September 2018 (Belgian Official Gazette, 5 October 2018)

TITLE 1 - Objective and definitions

Article 1.

[§ 1. This Royal Decree lays down certain information obligations that must be complied with vis-à-vis retail clients when marketing financial products on a professional basis within the territory of Belgium, including marketing of financial products by the issuing entity.]

§ 1, first subparagraph replaced by Article 1, 1° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

By way of derogation from the first subparagraph, the information obligations as referred to in this Decree do not apply:

1° where in order to purchase, subscribe to, enter into, accept, sign up for or open a financial product, a retail client is required to invest an initial amount of at least EUR 100,000 or EUR 250,000 in the case of an open-ended undertaking for collective investment;

[2° where the marketing of a financial product that has already been issued takes place within the framework of a service consisting of receiving and transmitting orders or executing orders, within the meaning of Article 46, 1°, 1 and 2 respectively of the Law of 6 April 1995 on the legal status and supervision of investment firms, insofar as the marketer of the product does not receive any other remuneration than what they are paid by the retail client upon purchase and does not make any offers within the meaning of Article 3, §§ 1 or 2 of the Law of 16 June 2006, Article 3, 13° or 5, § 1 of the Law of 3 August 2012 or Article 3, 27° or 5, § 1 of the Law of 19 April 2014.]

§ 1, second subparagraph, 2° replaced by Article 1, 2° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

[2° where the marketing of a financial product that has already been issued takes place within the framework of a service that consists of receiving and transmitting orders or executing orders, within the meaning of Article 46, 1°, 1 and 2 respectively of the Law of 6 April 1995 on the legal status and supervision of investment firms, insofar as the marketer of the product does not receive any other remuneration than what they are paid by the retail client upon purchase, and does not make any offers within the meaning of [Article 4, 2° of the Law of 11 July 2018], Article 3, 13° or 5, § 1 of the Law of 3 August 2012 or Article 3, 27° or 5, § 1 of the Law of 19 April 2014.]

§ 1, second subparagraph, 2° replaced by Article 1, 2° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015 and amended by Article 41 of the Law of 23 September 2018 – Belgian Official Gazette, 5 October 2018 (entry into force on 21 July 2019)

§ 2. This Decree does not apply to agreements entered into for first and second-pillar pensions.

§ 3. This Decree does not apply to insurance products covering major risks as referred to in Article 5, 39° of the Law of 4 April 2014, with the exception of the risks described in point b) of that provision, where the policyholder is a practitioner of a liberal profession and the risk pertains to the exercise of that activity.

Article 2

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

1° "marketing": presenting a financial product, in any way whatsoever, with a view to encouraging an existing or potential retail client to purchase, subscribe to, enter into, accept, subscribe for or open the financial product;

2° "retail clients": retail clients within the meaning of Article 2, first paragraph, 29°, of the Law of 2 August 2002;

3° "financial products": products as referred to in Article 2, first paragraph, 39° of the Law of 2 August 2002;

4° "savings products": the following types of products:

a) accounts on which deposits of money are received as referred to in Article 68*bis*, first paragraph, 1° of the Law of 16 June 2006, including:

a) accounts on which deposits of money are received as referred to in [Article 27, first paragraph, 1° of the Law of 11 July 2018], including:

4° a) amended by Article 42, a) of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018 (entry into force on 21 July 2019)

- regulated savings accounts;

- unregulated savings accounts:

- term deposit accounts;

with the exception of payment accounts within the meaning of Article 2, 8° of the Law of 10 December 2009 on payment services;

b) the class 21, 22 and 26 products belonging to the life insurance activities included in Annex I to the Royal Decree of 22 February 1991 containing general regulations on the supervision of insurance companies that include a savings component, and the products referred to in points I, II and VI of Annex I to Directive 2002/83/EC or in Annex II to Directive 2009/138/EC that include a savings component;

c) products that constitute a combination of various agreements as referred to under b);

5° "investment products": the following types of products:

a) investment instruments within the meaning of Article 4 of the Law of 16 June 2006;

a) investment instruments within the meaning of [Article 3 of the Law of 11 July 2018];

5°, a) amended by Article 42, b) of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2019 (entry into force on 21 July 2019)

b) class 23 products belonging to the life insurance activities included in Annex I of the Royal Decree of 22 February 1991 containing general regulations on the supervision of insurance companies, and the products referred to in point III of Annex I to Directive 2002/83/EC or Annex II to Directive 2009/138/EC.

c) financial products that combine the characteristics of both investment products and savings products;

[6° ...]

6° abrogated by Article 6, 1° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

7° "term deposit accounts": deposits of money with a predetermined term and interest rate;

8° "regulated savings accounts": savings accounts that meet the conditions laid down in Article 2 of the Royal Decree implementing the 1992 Income Tax Code (RD/ITC 92) [or, in the case of savings deposits received by credit institutions established in another Member State of the European Economic Area, the equivalent conditions laid down by the corresponding competent authorities of that Member State];

8° supplemented by Article 2 of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

9° "unregulated savings accounts": savings accounts that do not meet the conditions laid down in Article 2 of the Royal Decree implementing the 1992 Income Tax Code (RD/ITC 92) [or, in the case of savings deposits received by credit institutions established in another Member State of the European Economic Area, the equivalent conditions laid down by the corresponding competent authorities of that Member State];

9° supplemented by Article 2 of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

10° "open-ended undertakings for collective investment": undertakings as referred to in Article 3, 5° of the Law of 3 August 2012 and in Article 3, 8° of the Law of 19 April 2014 on alternative investment funds and their managers;

11° "advertisement": any communication that is intended specifically to promote the purchase of, subscription to, entry into, acceptance of, signing up for or opening of a financial product, regardless of the channel by which or the way in which it is done;

12° "manufacturer": the person that developed or issued the product for marketing directly or via third parties, namely:

a) the credit institution for financial products as referred to in Article 2, 4°, a);

b) the insurer for insurance products;

c) the issuer for investment instruments, with the exception of undertakings for collective investment;

d) for undertakings for collective investment, the investment company or, for each undertaking for collective investment that it manages, the management company of undertakings for collective investment;

13° "regulated distributor": the person other than the manufacturer of the financial product that either markets that product or uses the services of regulated intermediaries for the marketing of the said product, and that has one of the following legal statuses:

- a) the status of a credit institution as defined in Article 1, § 3 of the Law of 25 April 2014 on the legal status and supervision of credit institutions;
- b) the status of an investment firm as defined in Article 44 of the Law of 6 April 1995 on the legal status and supervision of investment firms;
- c) the status of an insurance company subject to the Law of 9 July 1975 on the supervision of insurance companies;
- d) the status of a management company of undertakings for collective investment as defined in Article 3, 12° of the Law of 3 August 2012;
- e) the status of AIF manager as defined in Article 3, 13° of the Law of 19 April 2014 on alternative investment funds and their managers;

14° "regulated intermediary": an insurance intermediary as referred to in Article 5, 20° of the Law of 4 April 2014 and an intermediary in banking and investment services as referred to in Article 4, 2°, of the Law of 22 March 2006 on intermediation in banking and investment services and on the distribution of financial instruments;

15° "home State": the State where the entity in question has its registered office;

[16° ...]

16° abrogated by Article 6, 1° of the Royal Decree of 25 December 2017 - Belgian Official Gazette, 29 December 2017

[17° ...]

17° abrogated by Article 6, 1° of the Royal Decree of 25 December 2017 - Belgian Official Gazette, 29 December 2017

18° "working days": all calendar days with the exception of Sundays and legal holidays. If the deadline, expressed in working days, falls on a Saturday, it shall be extended to the next working day;

[18/1° "PRIIP": a product as defined in Article 4(3) of Regulation 1286/2014;

18/2° "standardized insurance product information document": the document referred to in Article 20 (5) of Directive 2016/97;]

18/1° and 18/2° inserted by Article 6, 2°, of the Royal Decree of 25 December 2017 - Belgian Official Gazette, 29 December 2017

19° "Law of 2 August 2002": the Law of 2 August 2002 on the supervision of the financial sector and on financial services;

20° "Law of 16 June 2006": the Law of 16 June 2006 on public offers of investment instruments and admissions of investment instruments to trading on regulated markets;

[20° "Law of 11 July 2018": the Law of 11 July 2018 on public offers of investment instruments and admissions of investment instruments to trading on a regulated market;]

20° replaced by Article 42, c) of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018 (entry into force on 21 July 2019)

[20°/1 Regulation 2017/1129: Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC;]

20°/1 inserted by Article 42, d) of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018 (entry into force on 21 July 2019)

21° "Law of 3 August 2012": the Law of 3 August 2012 on certain forms of collective management of investment portfolios;

22° "Royal Decree of 12 November 2012": the Royal Decree of 12 November 2012 on certain public undertakings for collective investment;

23° "Law of 4 April 2014": the Law of 4 April 2014 on insurance;

24° "Law of 19 April 2014": the Law of 19 April 2014 on alternative investment funds and their managers.

[25° "Regulation 1286/2014": 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);

26° "Directive 2016/97": Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution.]

25° and 26° inserted by Article 6, 3°, of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

TITLE 2.

[Articles 3 to 8 ...]

Title 2 abrogated by Article 7 of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

TITLE 3. - Advertisements and other documents and announcements

CHAPTER 1. – Principle

Article 9

§ 1. Notwithstanding the conditions laid down in the Law of 3 August 2012, the Law of 16 June 2006, the Law of 2 August 2002, the Law of 4 April 2014 and the Law of 19 April 2014, all advertisements that are disseminated to retail clients for the marketing of financial products [by the manufacturer, the regulated distributor or the regulated intermediary, insofar as they are in a position to issue, transfer or open the financial products in question, or by a person acting on its behalf] must meet the conditions laid down in this Title. [Anyone who directly or indirectly receives remuneration or a benefit in connection with the marketing shall be considered to be acting on behalf of the aforementioned persons.]

§ 1, first subparagraph amended by Article 3, 1° and 2° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

§ 1. Notwithstanding the conditions laid down in the Law of 3 August 2012, [Regulation 2017/1129 and the Law of 11 July 2018], the Law of 2 August 2002, the Law of 4 April 2014 and the Law of 19 April 2014, all advertisements that are disseminated to retail clients for the marketing of financial products [by the manufacturer, the regulated distributor or the regulated intermediary, insofar as they are in a position to issue, transfer or open the financial products in question, or by a person acting on its behalf] must meet the conditions laid down in this Title. [Anyone who directly or indirectly receives remuneration or a benefit in connection with the marketing shall be considered to be acting on behalf of the aforementioned persons.]

§ 1, first subparagraph amended by Article 3, 1° and 2° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015 and by Article 43, 1° of the Law of 23 September 2018 – Belgian Official Gazette, 5 October 2018 (entry into force on 21 July 2019)

The provisions of this Title also apply to the other documents and announcements disseminated to retail clients [by the aforementioned persons] when marketing financial products.

§ 1, second subparagraph amended by Article 3, 3° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

[§ 1/1. By way of derogation from § 1, Chapter III of this Title does not apply to advertisements that are disseminated to retail clients in connection with the marketing of investment instruments.

The advertisements as referred to in the first subparagraph must meet the conditions laid down by or pursuant to Article 22, paragraphs 2 to 5 of Regulation 2017/1129.]

§ 1/1 inserted by Article 43, 2° of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018 (entry into force on 21 July 2019)

§ 2. By way of derogation from § 1, Article 12, § 1, 1° does not apply to advertisements for one or more categories of financial products where no specific product is identified. The remaining provisions of this Title apply to this type of advertisement, unless the required information cannot be provided for the entire category in question.

§ 3. Titles VI, VII, XI and XIII of the Law of 16 June 2006, with the exception of Article 60, apply:

1° where investment instruments are marketed to retail clients in the context of an offer that is not public within the meaning of Article 3, § 2 of the Law of 16 June 2006;

2° where investment instruments as referred to in Articles 16, § 1 and 18, § 1 of the Law of 16 June 2006 are marketed to retail clients.

[§ 3. Title V, with the exception of Article 24, and Title VI of Book II, Book IV and Articles 33 and 34 of the Law of 11 July 2018 shall apply:

1° where investment instruments as referred to in Article 1, paragraph 2 of Regulation 2017/1129 or in Article 10, § 2 of the Law of 11 July 2018 are marketed to retail clients;

2° where investment instruments are marketed to retail clients in the context of an offer of investment instruments of a type referred to in Article 10, § 3 of the Law of 11 July 2018;]

§ 3 replaced by Article 43, 3° of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018 (entry into force on 21 July 2019)

[3° where investment instruments are marketed to retail clients in the context of an offer of investment instruments as referred to in Article 10, § 3, 2° of the Law of 11 July 2018;]

§ 3, 3° inserted by Article 51, § 2 of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018 (entry into force on 21 July 2019)

CHAPTER 2

[Article 10 ...]

Chapter 2 abrogated by Article 8 of the Royal Decree of 25 December 2017 - Belgian Official Gazette, 29 December 2017

CHAPTER 3. - Contents of the advertisement

Section 1 - General requirements

Article 11

Advertisements must meet the following requirements:

1° the information contained therein must not be inaccurate or misleading;

2° the potential benefits of the financial product must not be emphasized without also giving a fair, prominent and balanced indication of the associated risks, limitations or conditions. Those risks, limitations or conditions must be displayed legibly and in a font size that is at least identical to the one used for the presentation of the benefits;

3° important information, disclosures or warnings must not be misrepresented, played down, or concealed;

4° the emphasis must not be placed on characteristics that have little or no relevance for a good understanding of the nature and risks of the financial product or, in the case of insurance products, of the cover offered and the calculation of the premiums;

5° the information contained therein must be consistent with the information that, where applicable, is included in the prospectus, [the information sheet,] [the key information document,] [the key investor or saver information document] [or the standardized insurance product information document], as well as with all other contractual or pre-contractual information;

5° amended by Article 4 of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015, by Article 9, 1° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017, by Article 9, 2° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017 (entry into force on the date when the provisions transposing Article 20.5 of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution enter into force) and by Article 44 of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018

6° the information must be displayed in such a way that it is comprehensible for a retail client;

7° all advertisements must be clearly recognizable as such;

8° any confusion with advertisements for the manufacturer or the person marketing or managing the financial product, or with advertisements for a financial service within the meaning of Article 2, first paragraph, 40° of the Law of 2 August 2002 is forbidden;

9° advertisements that relate simultaneously to various types of financial products must make a clear distinction in both form and content between the information relating to the various types of financial products.

Section 2 - Minimum contents

Article 12

§ 1. Notwithstanding Article 11, all advertisements shall contain at least the following information:

1° the name of the financial product;

If the name of the financial product does not refer to the name of its manufacturer or is inconsistent with the main risks associated with the product, then additional information must be displayed prominently alongside the name of the product in order to draw the attention of retail clients specifically to it;

2° the law governing the financial product and the home State of the manufacturer of the product:

3° the type of financial product;

4° as far as the investment and savings products are concerned:

a) a concise statement of the savings or investment objective;

b) the earnings and the conditions linked to any earnings formula and, where applicable, the statement that the earnings may be adjusted, as well as the way in which the clients will be informed of any adjustments to the earnings;

[c) ...]

§ 1, 4° c) abrogated by Article 10, 1° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

[cbis) a concise statement of the main risks and, if the financial product is directly or indirectly exposed to a potential credit risk of more than 35% on one or more specific entities, the identity and creditworthiness of the entity(ies) shall be displayed prominently;]

§ 1, 4°, cbis) inserted by Article 5, 3° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

[d) an overview of all costs and taxes charged to the retail client;]

§ 1, 4°, d) replaced by Article 10, 2° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

e) the place where the value or price of the financial product is published;

f) the minimum subscription amount, if any;

5° in the case of insurance products that are not investment or savings products:

a) the place where clients can receive a contract offer that includes the calculation of the premium,

- b) a concise statement of the cover being offered,
- c) an indication of the principal risks not covered by the insurance contract in question;

6° a reference to:

- a) where applicable, the prospectus, [the information sheet,] [the key information document,] [the key investor or saver information documents] [or the standardized insurance product information document], specifying the need for retail clients to go through these documents before purchasing, subscribing to, entering into, accepting, signing up for or opening the financial product;

§ 1, 6°, a) amended by Article 6 of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015, by Article 10, 3° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017, by Article 10, 3°, b) of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017 (entry into force on the date when the provisions transposing Article 20.5 of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution enter into force) and by Article 45 of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018

b) any other relevant document containing contractual or pre-contractual information, such as the management rules for insurance products linked to an investment fund;

c) the place where the documents referred to under a) and b) can be obtained by retail clients free of charge [...] or the way in which these documents can be accessed by retail clients [, notwithstanding the application of Article 9 of Regulation 1286/2014];

§ 1, 6°, c) amended by Article 10, 4°, of the Royal Decree of 25 December 2017 - Belgian Official Gazette, 29 December 2017

7° if none of the documents mentioned in point 6°, a) is available, a specific warning to this effect;

8° the term of the financial product;

9° the contact information for the independent entity as referred to in Book XVI of the Code of Economic Law and for the internal complaints department to which any complaints may be submitted;

§ 2. With the exception of the information referred to in § 1, 1°, 3°, 6°, a) and 7°, certain items of information as referred to in § 1 may, [notwithstanding the application of Article 9 of Regulation 1286/2014], be excluded from the advertisement if it is not technically possible to include them, with the proviso that retail clients may not be misled by the exclusion of this information.

§ 2, first subparagraph amended by Article 11, 1° of the Royal Decree of 25 December 2017 - Belgian Official Gazette, 29 December 2017

If the advertisement is disseminated using an electronic medium, the information referred to in § 1, 6°, a) [and c),] and 7° may be provided via a hyperlink, as appropriate, on condition that this link leads clients directly to the information in question.

§ 2, second subparagraph amended by Article 11, 2° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

Article 13

The earnings as referred to in Article 12, § 1, 4°, b) shall include both the gross earnings and, where technically possible, the net earnings on an annual basis after deducting the costs and taxes applicable to an average retail client who is a natural person and a resident of Belgium, and shall be accompanied by the statement that this tax regime applies to such persons.

If only the gross earnings are included, the applicable costs and taxes should be mentioned nearby, and there should be a statement that these costs and taxes are not included in the calculation of the earnings.

[Article 14

Where the advertisement for a PRIIP that is not excluded or exempted from the application of Regulation 1286/2014 mentions a risk indicator, the latter must be established in accordance with the provisions of Regulation 1286/2014.

By way of derogation from the first paragraph, mention can also be made in the advertisement of a risk indicator that is not established in accordance with the provisions of Regulation 1286/2014, provided the said risk indicator is mentioned after the risk indicator that has been established in accordance with the provisions of Regulation 1286/2014.]

Article replaced by Article 12 of the Royal Decree of 25 December 2017 - Belgian Official Gazette, 29 December 2017

Section 3 - Past, simulated and future performance of investment products and savings products

Article 15

Where advertisements for investment products and savings products mention past, simulated or future performance, the provisions of this section apply.

Article 16

§ 1. Past, simulated and future performance over more than one year must be presented in the form of actuarial yields.

Past, simulated and future performance over less than one year must not be presented in the form of actuarial yields.

§ 2. Past, simulated and future performance is to be presented as gross returns and, where technically possible, as net returns, that is, after deducting the costs and taxes applicable to an average retail client who is a natural person and a resident of Belgium, accompanied by the statement that this tax regime applies to such persons.

If only the gross return is mentioned, this return shall be accompanied by the statement that the costs and taxes are not included in the calculation of the return.

Article 17

Where an advertisement mentions past performance, the following conditions must be fulfilled:

- 1° the financial product in question must be in existence for at least one year;
- 2° the indication of past performance must not be the central theme of the information provided;

3° the information must contain appropriate data about past performance on an actuarial basis for the previous five years [or for the entire period in which the product has been offered] where that period is shorter than five years, or over a longer period;

3° amended by Article 8, 1° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

4° in addition to the performance figures as referred to in 3°, other actuarial yield figures for periods of more than one year may be provided for specific 12-month periods;

5° in addition to the performance figures as referred to in 3°, cumulative performance figures for periods of one year or less may be provided for specific periods not exceeding one year;

6° the choice of performance periods and the date when the performance figures are calculated [...] may not mislead retail clients as to past performance;

3° amended by Article 8, 1° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

7° the reference period and the source of information must be clearly stated;

8° the information must contain a prominent warning that these figures are based on past performance and that past performance is not a reliable indicator of future performance;

9° where past performance figures are given in a currency other than the euro, the currency in question must be clearly indicated and at the same time, a warning must be given that the return in euro may be higher or lower depending on fluctuations in exchange rates;

If the past performance in euro has fallen due to fluctuations in exchange rates, this must be clearly indicated in the advertisement;

[10° the information must state the basis for calculating the performance figures.]

10° replaced by Article 8, 3° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

The performance figures as referred to in 3°, 4° and 5° can be calculated using a simulator provided to clients on a website.

Article 18

Where the product conditions refer to a financial index, the product's past performance, as referred to in Article 17, may be compared with the past performance of the financial index in question.

The comparison of returns must be based on external market data accessible to the public. The comparison must relate to the same reference period.

Article 19

If a material change occurred in the product conditions during the period covered in the past performance figures, the past performance prior to that material change shall continue to be indicated in the performance figures.

The period prior to a material change as referred to in the first paragraph shall be indicated in the performance figures, with a clear warning that the performance was achieved under circumstances that no longer apply.

Article 20

[§ 1. The change in the value or the price of the product may be presented using a graph showing the previous five years or the entire period in which the product has been offered, if this period is shorter than five years, or over a longer period.]

§ 1 replaced by Article 9, 1° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

§ 2. If the product conditions refer to a financial index or an underlying, the change in the financial index or underlying in question can be presented using a graph showing the previous five years or the entire period in which the index or underlying was available, should this period be shorter than five years, or over a longer period.

The financial index may also be included in the graph referred to in § 1.

If there is no direct relation between changes in the product's value and changes in the value of the financial index or the underlying to which the product conditions refer, this must be mentioned under the graph.

§ 3. The conditions [as referred to in Article 17, 6° to 9°] shall, mutatis mutandis, apply to the information provided as referred to in §§ 1 and 2.

§ 3 amended by Article 9, 2° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

Article 21

Where an advertisement includes or refers to simulated past performance, the advertisement must relate to an investment product, savings product or financial index and must fulfil the following conditions:

1° the simulated past performance must be based on the actual past performance of one or more investment products, savings products or financial indexes that are identical to or constitute the underlying of the product in question;

2° as regards the actual past performance as referred to in 1°, conditions 2° to 7°, 9° and 10° of Article 17 must be met;

3° the advertisement must contain a prominent warning that this is simulated past performance and that past performance is not a reliable indicator of future performance.

Article 22

If the advertisement contains information about the future performance of a financial product other than the [scenarios] referred to in Article 23, the following conditions must be fulfilled:

Introductory sentence amended by Article 13, 1° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

a) the future performance may not be based on or refer to simulated past performance figures;

b) the future performance shall be based on reasonable assumptions that are supported by objective data;

c) if the future performance is based on gross returns, the impact of costs and taxes must be mentioned;

d) the advertisement must clearly warn that such projected future performance is not a reliable indicator of future performance.

[e) ...]

e) abrogated by Article 13, 2° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

Article 23

[§ 1. All advertisements for a PRIIP that is not excluded or exempted from the application of Regulation 1286/2014 shall include or refer to the scenarios referred to in the key information document, notwithstanding the obligations laid down in Article 48 of the Law of 4 April 2014.]

§ 1 replaced by Article 14, 1° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

[§ 2. ...]

§ 2 abrogated by Article 14, 2° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

§ 3. The [scenarios or reference thereto] referred to in [§ 1] can be omitted from the advertisement if it is technically impossible to mention them because of the medium or the form of the advertisement.

§ 3 amended by Article 14, 3° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

Section 4 - Awards and ratings

Article 24

§ 1. Where an advertisement mentions an award obtained by the financial product, the advertisement shall contain the following information or refer to a specific webpage that contains the following information:

1° the name of the institution that is behind the ranking;

2° the ranking scale;

3° the date of publication;

4° the place where the publication took place;

5° the category in which the financial product was eligible for the award;

6° the number of financial products that belong to that category.

Where the ranking is indicated by means of symbols, the meaning of these symbols shall be given in the advertisement or on the aforementioned webpage.

§ 2. Where an advertisement indicates a rating, the rating scale and the meaning of that rating shall be included, or reference shall be made to a specific webpage setting out the rating scale and its meaning.

The rating may not be the central theme of the advertisement.

Section 5 - Comparisons

Article 25

Where financial products are compared with each other in an advertisement, the following conditions must be fulfilled:

- 1° the comparison is appropriate and presented in a proper and balanced manner;
- 2° the information sources used for the comparison are mentioned;
- 3° the main facts and assumptions used for the comparison are mentioned.

CHAPTER 4. - Approval by the FSMA

Article 26

§ 1. Notwithstanding Article 60 of the Law of 16 June 2006, Articles 60, 65 to 70 of the Law of 3 August 2012 and Articles 225, 230 to 234 of the Law of 19 April 2014, every advertisement must be submitted to the FSMA for prior approval in the form in which it will be disseminated to retail clients, [in cases where [...] a key investor or saver information document must be submitted to the FSMA for approval].

§ 1, first subparagraph amended by Article 10, 1° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015 and by Article 15, 1° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

§ 1. Notwithstanding [Article 23 of the Law of 11 July 2018, Articles 60, 65 to 70 of the Law of 3 August 2012 and Articles 225, 230 to 234 of the Law of 19 April 2014, every advertisement must be submitted to the FSMA for prior approval in the form in which it will be disseminated to retail clients, [in cases where [...] a key investor or saver information document must be submitted to the FSMA for approval].

§ 1, first subparagraph amended by Article 10, 1° and 2° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015 and by Article 15, 1° of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017 and by Article 46 of the Royal Decree of 23 September 2018 – Belgian Official Gazette, 5 October 2018 (entry into force on 21 July 2019)

[...]

§ 1, second subparagraph abrogated by Article 15, 2°, of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

[...] The FSMA will make a decision within five working days after receipt of a complete dossier. After this period has expired, the application will be considered to have been rejected.

§ 2 becomes § 1, third subparagraph pursuant to Article 10, 2° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

[§ 2.] The FSMA can determine the approval procedure as well as the contents of the dossier to be attached to the application for approval. In so doing, the FSMA takes into consideration the type and content of the advertisement, based on criteria such as the standardized and recurring nature thereof, the medium used and the characteristics of the financial product.

§ 3 becomes § 2 pursuant to Article 10, 3° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

[§ 3.] The FSMA's approval of the advertisement does not in any way constitute a judgment as to the appropriateness of purchasing, subscribing to, entering into, accepting, signing up for or opening the financial product in question, or of the quality of that product [and] the associated risks [...].

The advertisement may not make any mention of action by the FSMA.

§ 4 becomes § 3 pursuant to Article 10, 3° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

§ 3 amended by Article 15, 3°, of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

TITLE 4. - Amending provisions

CHAPTER 1. - Amendments to the Royal Decree of 14 November 2003 on life insurance business

Article 27

[In Article 8 of the Royal Decree of 14 November 2003 on life insurance business, as inserted by the Royal Decree of 10 June 2004 and amended by the Royal Decree of 21 April 2007, paragraphs 5 and 6 have been abrogated.]

Article replaced by Article 11 of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

Article 28

[In Article 72, § 2 of the same Decree, as amended by the Royal Decree of 21 April 2007, the provision under 13° is replaced as follows:

"13° for every investment fund in transferable securities, the risk category to which it belongs, defined in accordance with Article 8 of Commission Regulation 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".]

Article replaced by Article 12 of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

Article 29

Annex 6 to the same Decree is abrogated.

CHAPTER 2. - Amendments to the Royal Decree of 12 November 2012 on certain public undertakings for collective investment

Article 30

[§ 1. Articles 35, second paragraph, 36, 37, §§ 1 and 2, first subparagraph, 38, 40, 41, 42, first paragraph, 43, 45 and 219, § 3 and Annex B, section I, part 1. Advertising, of the Royal Decree of 12 November 2012 on certain public undertakings for collective investment, are abrogated.]

§ 2. The introductory sentence of Article 219, § 2, first subparagraph of the same Royal Decree is replaced as follows:

"§ 2. Articles 35, 39, 42, second and third paragraphs, 44 and 46 apply by way of analogy to:"

§ 3. Article 223, § 1 first paragraph of the same Royal Decree is replaced as follows:

"§ 1. Articles 29 to 35, 37, § 2, 39, 42, second and third paragraphs, 44 and 46 on the prospectus and on the key investor information document concerning the public offer of units and on documents relating to the public offer of units apply, unless the FSMA grants an exemption from the said articles."]

Article replaced by Article 13 of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

Article 31

In Annex B, Section I, Part 2. Periodic reports, of the same Decree, the following amendments are made:

1° in point 3, the last subparagraph is replaced as follows:

"The bar chart shall meet the following criteria:

- a) the scale of the Y-axis of the bar chart shall be linear, not logarithmic;
- b) the scale shall be adapted to the size of the bars shown and shall not compress the bars so as to make fluctuations in performance harder to distinguish;
- c) the X-axis shall be set at 0% (performance of 0%);
- d) a legend shall be provided for each bar, indicating the performance achieved, expressed as a percentage;
- e) past performance figures shall be rounded off to one decimal place.";

2° point 5 is replaced by the following:

"5. The presentation of the performance figures shall be supplemented by statements which appear prominently and which:

- a) warn of the limited value of the performance figures as an indicator of future performance [...];

Point 5, a) of Annex B, Section I, Part 2. Periodic reports, of the Royal Decree of 12 November 2012 on certain public undertakings for collective investment, as it will be amended by the entry into force of Article 31 of the Royal Decree of 25 April 2014 imposing certain information obligations when marketing financial products to retail clients amended by Article 14 of the Royal Decree of 2 June 2015 – Belgian Royal Gazette, 10 June 2015

- b) briefly indicate which commissions and fees have and have not been included in the calculation of the past performance. This information is not mandatory for UCIs that have no entry or exit fees;
- c) specify the year in which the UCI came into existence;
- d) specify the currency in which the past performance was calculated. This currency must be identical to the currency used for the calculation of past performance specified in the key investor information document. Where past performance figures are given in a currency other than the euro, the currency

in question must be clearly indicated and, at the same time, a warning must be given that the return in euro may be lower or higher depending on fluctuations in the exchange rate.

6. The calculation of performance figures is based on the net asset value of the UCI and the assumption that the distributable income of the UCI was reinvested.

7. Where a material change occurred in a UCI's objectives and investment policy during the period covered in the performance figures, the UCI's past performance prior to that material change shall continue to be shown.

The period prior to the material change as referred to in the previous subparagraph shall be indicated in the performance with a clear warning that the performance was achieved under circumstances that no longer apply.

8. If the 'Objectives and investment policy' section of the key investor information document refers to a benchmark, a comparison must be made between the performance figures of the UCI and of the benchmark. Any comparison of performance must be based on external market data accessible to the public. The comparison must relate to the same reference period.

For UCIs for which no information is available on past performance for the reference period stipulated, the benchmark for the years in which the UCI did not yet exist should not be shown.

9. In the case of a restructuring as referred to in Article 160, only the past performance of the receiving UCI shall be included.

By way of derogation from the previous subparagraph, past performance may be included for:

a) the contributing UCI or the contributing sub-fund in the case of UCIs or sub-funds that have been formed (upon creation) from the contribution of all the assets and liabilities of a single other UCI or of a single other sub-fund;

b) the sub-fund or common fund to be absorbed in the event of a merger as referred to in Article 163, or a restructuring as referred to in Article 300 of the Law of 3 August 2012.

10. The performance figures of a feeder should relate specifically to the feeder and should not reproduce the past performance of the master.

The previous subparagraph does not apply if:

a) the feeder uses the past performance of its master as a benchmark; or

b) the feeder has past performance record from before the date on which it began to operate as a feeder, its own record being retained in the performance figures for the relevant years; with the material change labelled as required in the second subparagraph of point 7".

TITLE 5. - Abrogating provision

Article 32

[Chapter 3 of the Royal Decree of 18 June 2013, which lays down certain information obligations when marketing regulated savings accounts, as amended by the Royal Decree of 21 December 2013, is abrogated.]

Article replaced by Article 15 of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

TITLE 6. - Entry into force and miscellaneous provisions

Article 33

[§ 1.] This Decree enters into force one year after the day when it is published in the Belgian Official Gazette.

First subparagraph becomes § 1 pursuant to Article 16, 1° of the Royal Decree of 2 June 2015 - Belgian Official Gazette, 10 June 2015

[§ 2.]

§ 2 inserted by Article 16, 3° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015 and abrogated by Article 16 of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

[§ 3. By way of derogation from § 1, the provisions of Title 3 do not apply to advertisements and other documents and announcements of which the dissemination began before the date mentioned in § 1, and shall not apply to them until 31 December 2015 inclusive.]

second subparagraph becomes § 3 and is replaced by Article 16, 2° of the Royal Decree of 2 June 2015 – Belgian Official Gazette, 10 June 2015

Article 34

The Minister responsible for Finance and the Minister responsible for the Economy and Consumer Affairs are, each for their own area of competence, entrusted with the implementation of this Decree.

Annex A:

[...]

Abrogated by Article 17 of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017

Annex B:

[...]

Abrogated by Article 17 of the Royal Decree of 25 December 2017 – Belgian Official Gazette, 29 December 2017