



## **PRIIPs Enforcement Act** *(PRIIP-Vollzugsgesetz)*

### **Long title**

Federal Act implementing Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

### **Original version:**

Federal Law Gazette I No. 15/2018

### **Amendment:**

Federal Law Gazette I No. 74/2022

### **Other parts of the Text**

The National Council has decided by resolution:

### **Text**

#### **Purpose of this Act**

**Article 1** The purpose of this Federal Act shall be to implement Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), published in OJ L 352, 09.12.2014, p. 1, most recently amended by Regulation (EU) 2016/2340 amending Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products as regards the date of its application, OJ L 354, 23.12.2016, p. 35.

#### **Pension products**

**Article 2** (1) State-sponsored retirement provision contracts pursuant to Article 108g of the Income Tax Act 1988 (EStG 1988; Einkommensteuergesetz 1988) published in Federal Law Gazette I No. 400/1988, supplementary pension insurance pursuant to Article 108b para. 1 no. 4 EStG 1988 and contracts for future safeguarding pursuant to Article 3 para. 1 no. 15 lit. a EStG 1988 shall be considered as pension products pursuant to Article 2 (2) (e) of Regulation (EU) No 1286/2014.

(2) In the case of contracts concluded after 30 September 2018 for state-sponsored retirement provision contracts pursuant to Article 108g EStG 1988 and supplementary pension insurance pursuant to Article 108b para. 1 no. 4 EStG 1988, pension fund facilities and insurance undertakings shall have to obtain from customers the information that is required in order to identify their needs and wishes, in particular with regard to their financial situation and their targets regarding old age provision, and to recommend the contract to the customer from the list of suitable contracts for the satisfaction of their wishes and needs, that best corresponds to their needs and wishes. Other obligations to provide advice set out under law remain unaffected.

#### **Competent authority**

**Article 3** (1) The FMA is the competent authority for the monitoring of compliance with Regulation (EU) No 1286/2014 as well as for any delegated legal acts and Regulatory Technical Standards issued based upon it by the European Commission, resolutions issued by the EIOPA pursuant to Article 16 (1) of Regulation (EU) No. 1286/2014 as well as the Regulations issued by the FMA pursuant to Article 4 para. 3 in conjunction with Article 17 (1) of Regulation (EU) No 1286/2014 by the following legal entities:

All English translation of the authentic German text is unofficial and serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt; BGBl.). All translations have been prepared with great care, but linguistic compromises had to be made. The reader should also bear in mind that some provisions of these laws will remain unclear without certain background knowledge of the Austrian legal and political system. Please note that these laws may be amended in the future and check occasionally for updates.



1. Credit institutions pursuant to Article 1 of the Austrian Banking Act (BWG; Bankwesengesetz), published in Federal Law Gazette No. 532/1993;
2. undertakings pursuant to Article 1 para. 1 nos. 1 to 5 of the Insurance Supervision Act 2016 (VAG 2016; Versicherungsaufsichtsgesetz 2016), published in Federal Law Gazette I No. 34/2015;
3. Investment firms and investment services providers within the scope of their licence pursuant to the Securities Supervision Act 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018), published in Federal Law Gazette I No. 107/2017;
4. Investment funds pursuant to the Investment Funds Act of 2011 (InvFG 2011; Investmentfondsgesetz 2011), published in Federal Law Gazette I No. 77/2011;
5. Real estate investment fund management companies pursuant to the Real Estate Investment Fund Act (ImmoInvFG; Immobilien-Investmentfondsgesetz), published in Federal Law Gazette I No. 80/2003,
6. AIFMs pursuant to the Alternative Investment Fund Managers Act (AIFMG; Alternative Investmentfonds Manager Gesetz).

(2) In the enforcement of this Federal Act and Regulation (EU) No 1286/2014, the FMA shall act exclusively in the public interest.

### Supervisory measures and powers

**Article 4** (1) The FMA shall be afforded the supervisory powers and means pursuant to Article 3 para. 1 to the same way and scope as set out in the relevant supervisory laws, that it may also make use of in the enforcement of other obligations in accordance with these supervisory laws.

(2) The FMA shall be authorised within the scope of its competence pursuant to Article 3 para. 1 in cases of infringements by legal entities against Article 5 (1), Article 6, Article 7, Article 8 (1) to (3), Article 9, Article 10 (1), Article 13 (1), (3) und (4), Article 14 and Article 19 of Regulation (EU) No 1286/2014:

1. to instruct, under threat of a coercive penalty, them to restore legal compliance within a period of time which is appropriate in light of the circumstances;
2. to prohibit the providing of a key information document, which does not satisfy the requirements set out in Articles 6, 7, 8 or 10 of Regulation (EU) No. 1286/2014, and at the same time to instruction the publication of a new version of the key information document that does conform to the regulation;
3. to prohibit the marketing of a packaged retail and insurance-based investment product (PRIIP) pursuant to Article 4 (3) of Regulation (EU) No 1286/2014;
4. to suspend the marketing of a PRIIP pursuant to Article 4(3) of Regulation (EU) No 1286/2014;
5. to issue a public warning containing information about the person responsible for the infringement and the type of infringement.

(3) The FMA shall be authorised, within its scope of its competence pursuant to Article 3 para. 1 no. 2, to define supervisory measures pursuant to Article 17 (1) of Regulation (EU) No 1286/2014 by means of a Regulation or an administrative decision.

(4) The FMA shall be authorised, within its scope of its competence pursuant to Article 3 para. 1 no. 1, provided that it relates to insurance mediation activities pursuant to Article 21 para. 1 no. 8 BWG in conjunction with Article 137 of the Commercial Code 1994 (GewO 1994; Gewerbeordnung 1994), published in Federal Law Gazette No 194/1994, to define supervisory measures pursuant to Article 17 para. 1 lit. a of Regulation (EU) No 1286/2014 by means of a Regulation or an administrative decision.

(5) For the performance of duties pursuant to Article 3 para. 1, the FMA shall be authorised to request information and documentation of any kind and to receive copies thereof from all natural and legal persons that are authorised on the basis of regulations contained in Federal Acts to advise about PRIIPs, or to offer or sell a PRIIP.

(6) The FMA may also make use of its powers pursuant to para. 1 exclusively for the purposes of cooperation or exchange of information in accordance with Article 22 of Regulation (EU) No 1286/2014, even if the conduct, that is subject of the investigation does not constitute a breach of a regulation applicable in Austria.



### Penal provisions

**Article 5** (1) Any person who, as the person responsible (Article 9 Administrative Penal Act (VStG; Verwaltungsstrafgesetz 1991), published in Federal Law Gazette No. 52/1991) of a legal entity pursuant to Article 3 para. 1 nos. 1 to 6:

1. breaches Article 5 (1) of Regulation (EU) No 1286/2014, by not drafting and publishing a key information document for a PRIIP, before a PRIIP is offered to retail investors; or
2. breaches Article 6 or Article 8 para. 1 to 3 of Regulation (EU) No 1286/2014, by drafting and publishing a key information document in an incorrect or incomplete manner or not in the prescribed manner; or
3. breaches Article 7 of Regulation (EU) No 1286/2014, by not drafting a key information document in the prescribed language or not translating it into this language; or
4. breaches Article 9 of Regulation (EU) No 1286/2014 by making claims in advertising materials that contradict the information contained in the key information document or which downgrades the importance of the key information document or omits, or incorrectly or incompletely includes the necessary information; or
5. breaches Article 10 (1) of Regulation (EU) No 1286/2014 by not regularly reviewing and revising a key information document or not making such a key information document available without delay; or
6. breaches Article 13 (1), (3) and (4) or Article 14 of Regulation (EU) No 1286/2014, by not making a key information document available, not making one available in a timely manner, or not making one available in the prescribed manner; or
7. breaches Article 19 of Regulation (EU) No 1286/2014, by not having, or by not having in the prescribed manner, suitable procedures and provisions for the submission and responding to complaints, which guarantee that effective complaints handling procedure are available to retail investors in the event of cross-border disputes,

commits an administrative offence, and shall be fined up to EUR 700 000 by the FMA or up to double the amount of the gain arising from the breach or any loss avoided from the breach, where this amount is able to be determined.

(2) Any person who, as the person responsible (Article 9 VStG) of a legal entity, breaches pursuant to Article 3 para. 1 EIOPA resolutions pursuant to Article 16 (1) of Regulation (EU) No 1286/2014, commits an administrative offence, and shall be fined up to EUR 70 000 by the FMA.

### Penal provisions with regard to legal persons

**Article 6** (1) The FMA may impose fines on legal persons if persons who acted individually or as part of a body of a legal person and who have a managerial role within the legal person on the basis of:

1. a power of representation of the legal person,
2. a power to take decisions on behalf of the legal person, or
3. a power to exercise control within the legal person

have breached the obligations listed in Article 5 para. 1 nos. 1 to 7.

(2) Legal persons may also be held responsible for one of the breaches of the obligations listed in Article 5 para. 1 nos. 1 to 7, where such a breach by a person acting on behalf of the legal person occurred due to a lack of supervision or control by a person acting for the legal person named in para. 1.

(3) The fine pursuant to para. 1 or para. 2 shall be:

1. up to EUR 5 000 000; or
2. up to 3 % of total annual turnover; or
3. up to double the amount of the benefit derived from the breach or a loss avoided arising from the breach, where this amount is able to be determined.

The total annual turnover pursuant to no. 2 shall be determined on the basis of the most recently adopted annual financial statement. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking, which is required to draw up a consolidated financial statement in accordance with Directive 2013/34/EU 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 Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.06.2013, p. 19, last amended by Directive 2014/102/EU OJ L 334, 21.11.2014, p. 86, then the authoritative total annual turnover is the total annual turnover of the relevant type of income according to the relevant accounting provisions, that was stated in the last available consolidated accounts adopted by the competent body of the ultimate parent undertaking. Where the FMA is unable to determine or calculate the bases for the total annual turnover, then it shall estimate them. In so doing, all relevant circumstances shall be taken into account that are relevant for the estimate.

### Effective punishment of breaches

**Article 7** When determining the type of a supervisory measure pursuant to Article 4 or a fine pursuant to Articles 5 and 6 as well as the calculation of the fine, where appropriate the circumstances listed in particular in Article 25 of Regulation (EU) 1286/2014 are to be taken into account. The provisions of the VStG remain unaffected.

### Information to retail investors

**Article 8** If the FMA has imposed one or several fines pursuant to Article 5 para. 1 nos. 1 to 7 and Article 6 paras. 1 and 2, or has taken one or several supervisory measures pursuant to Article 4 para. 2, then it shall

1. inform the affected retail investors directly about the supervisory measures or sanctions under administrative procedural law, and shall notify them where to submit complaints and register claims for the compensation of damages; or
2. request the PRIIP manufacturer or the person that advises about the PRIIP or sells it to inform the affected retail investors and to provide the necessary information.

### Publication of sanctions and supervisory measures

**Article 9** (1) The FMA shall publish fines imposed and supervisory measures taken that are legally final in accordance with Article 29 of Regulation (EU) No. 1286/2014 on its official website once it has informed the party affected by the publication.

(2) The party affected by a publication may file a request to the FMA for verification of the lawfulness of such a publication in a procedure concluded by means of an administrative decision. In this case, the FMA shall announce the initiation of such proceedings in the same way as the original publication. If, in the course of this review, it is found that the publication was unlawful, the FMA shall correct the publication or, at the request of the person subject to this publication, either revoke it or remove it from its official website.

(3) In the event that an appeal is lodged against the decision underlying the publication pursuant to para. 1, then both this and the outcome of this procedure shall be published in the same manner as the original publication. In the event that suspensory effect is granted for such an appeal in a procedure in a court of law, then the FMA shall also make this known. If the appeal is granted, then the FMA shall correct the publication pursuant to para. 1 or shall at the request of the person subject to this publication, either revoke it or remove it from its official website.

(4) If a publication pursuant to para. 1 is not required to be removed from the FMA's official website, then it shall remain published for a period of five years. Publication of the personal data shall however only be maintained for as long as none of the criteria for an anonymised publication are fulfilled.

(5) Paras. 2 to 4 shall also apply to announcement of an administrative decision pursuant to Article 17 (5) of Regulation (EU) No. 1286/2014. Paras. 2 and 4 shall also apply to publications pursuant to Article 4 para. 2 no. 5.

### Notifications to the European Supervisory Authorities

**Article 10** (1) The FMA shall submit summarised information to the respective competent European Supervisory Authority annually about all supervisory measures taken pursuant to Article 4 para. 2 nos. 2 to 5 as well as all fines imposed pursuant to Articles 5 and 6.



(2) Where the FMA has published imposed fines and supervisory measures that are legally final pursuant to Article 9 para. 1, then it shall also inform the respective competent European Supervisory Authority at the same time.

### Reporting sanctions to ESMA

**Article 11** (1) The FMA shall have the effective mechanisms listed in Article 28 (2) (a) to (c) of Regulation (EU) No 1286/2014 in place, to encourage the notification of breaches or a the suspicion of a breach that infringes against Regulation (EU) No 1286/2014.

(2) Employees that report breaches against Regulation (EU) No 1286/2014 to the FMA shall neither be allowed as a consequence

1. to be disadvantaged, in particular in relation to their salary, professional promotion, in relation to training and education programmes, by being moved internally or by having their employment terminated, nor

2. to be held responsible in accordance with regulations under penal law,

unless the report was intentionally falsely submitted. The employer or a third party shall only have a claim for compensation in the case of a report that was clearly incorrect, which was made by the employee with a clear intention of causing damage. The authorisation to make such reports shall not be allowed to contractually restricted. Agreements to the contrary shall not be effective.

### Special procedural provisions

**Article 12** Fines imposed by the FMA pursuant to this federal act shall flow to the Federal Government.

### Costs

**Article 13** The costs of the FMA arising from its activity as the competent authority shall be assigned

1. to the appropriate accounting group pursuant to Article 19 FMABG or,

2. to the appropriate sub-accounting group, where sub-accounting groups are to be established within the accounting group in accordance with the Federal Act

to which the performance of supervisory tasks are assigned in accordance with the relevant supervisory laws listed in Article 3 para. 1 for the respective legal entity.

### Gender-neutral use of language

**Article 14** Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

### Enforcement

**Article 15** The Federal Minister of Finance shall be responsible for enforcing this Federal Act.

### References

**Article 16** Where references to other Federal Acts are made in this Federal Act, those acts are to be applied in their respective current versions.