European Parliament
2019-2024

Plenary sitting

A9-0162/2024

2.4.2024

***I
REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules
(COM(2023)0279 – C9-0182/2023 – 2023/0167(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Stéphanie Yon-Courtin

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules
(COM(2023)0279 – C9-0182/2023 – 2023/0167(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2023)0279),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0182/2023),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Economic and Social Committee of 25 October 2023[1],

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A9-0162/2024),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT[*]

to the Commission proposal

---

[1] OJ C, C/2024/881, 6.2.2024, ELI: http://data.europa.eu/eli/C/2024/881/oj.

[*] Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

2023/0167(COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) A core objective of the Capital Markets Union is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. To be able to do so, they must be supported by a regulatory framework that enables them to take investment decisions that correspond to their needs and aims and adequately protects them in the single market. The package of measures under the EU Retail investment strategy seeks to address the identified shortcomings.

[2] OJ C , , p. .

(2) Directives (EU) 2009/65/EC[3], 2009/138/EC[4], 2011/61/EU[5], 2014/65/EU[6] and (EU) 2016/97[7] of the European Parliament and of the Council. are designed to protect retail investors and seek to increase the confidence and ability of retail investors as they make important financial decisions. The Commission's work to evaluate and assess this framework has identified a number of important problems, including difficulties for retail investors to understand and compare investment offers on the basis of disclosure documentation which is not sufficiently relevant and engaging to help their decision-making. In addition, the Commission's work pointed to the growing risks related to misleading marketing information and practices provided via digital channels and shortcomings in the way products are manufactured and distributed that may result in unjustifiably high levels of costs for retail investors. The Commission's work also pointed to risks of bias in the investment advice process.

(3) Third party payments, such as fees, commissions or any monetary or non-monetary benefits paid to or received by investment firms and insurance undertakings and intermediaries by or from persons other than the client or customer, also termed as 'inducements', play a significant role in the distribution of retail investment products in the Union. The existing rules designed to manage conflicts of interests in Directives ▌2014/65/***EU*** and (EU) 2016/97, including restrictions on and transparency around the payments of inducements, have not proven sufficiently effective in mitigating consumer detriment and have led to different levels of retail investor protection across product segments and distribution channels. It is therefore necessary to further strengthen the investor protection framework to ensure that retail clients' best interests are protected uniformly across the Union. ***I***t is appropriate to ***introduce rules that***

---

3 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 (OJ L 302, 17.11.2009, p. 32).

4 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

5 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

6 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

7 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p.19).

better frame the current advice environment by ensuring that financial intermediaries provide more transparent, understandable and tailored advice to clients and consumers. This should ensure that clients and consumers are being offered products suitable to their needs and that they better understand the advice they receive.

▌

(5) In order to ensure that retail customers are not misled, it is important to stipulate in Directive (EU) 2016/97 that, in line with existing rules in Directive (EU) 2014/65, insurance intermediaries that indicate to their customers that they provide advice on an independent basis, should ***assess a sufficiently large number of insurance products available on the market***. This rule should not prevent insurance intermediaries offering advice to customers from accepting inducements, provided that the advice is not presented as independent, customers are informed of the inducements in line with applicable transparency requirements and that other legal requirements, including the requirement to act in the best interest of the customer, are complied with. ***In view of the diversity of insurance distribution structures in Member States, it should also not prevent insurance intermediaries whose legal status qualifies them as independent, from presenting themselves as not contractually tied to a specific insurance undertaking if they indicate that they receive inducements.***

(6) The existing safeguards conditioning the payment or receipt of inducements, which under Directive ▌2014/65***/EU*** require that the inducement is designed to enhance the quality of the service to the client, or under Directive (EU) 2016/97 should not have a detrimental effect on the quality of the service to the customer, have not been sufficiently effective in mitigating conflicts of interest. It is therefore ***proposed*** to remove those criteria and introduce a new, common test, both in Directive ▌2014/65***/EU*** and Directive (EU) 2016/97, that further clarifies how financial advisors should apply the principle of acting in the best interest of the client ***or customer***. Financial advisors should base their advice on an appropriate range of financial products ***suited to the client's or customer's needs***. ***The range of financial products offered should take into account the business model of the firm and the investment objectives of the client or customer. The best interest of clients and customers is broader than costs. Therefore, financial advisors should, after*** having identified ▌instruments ***suited to*** their clients***' or customers' needs***, ▌recommend the most ▌efficient ***product among products offering*** similar ***features*** to their clients ***and customers, taking into consideration its performance, level of***

risk, qualitative elements, costs and charges reported pursuant to Article 16-a. If advisors choose to ▌ recommend ***an equivalent*** product ***with higher*** costs to the client or customer, they should ▌ provide ***an objective justification*** for such ▌ recommendation and ***keep the record of that justification. Financial advisors should not place the interest of their firm ahead of the interest of their clients and customers***. In the case of insurance-based investment products, advisors should also ensure that the insurance cover included in the product is consistent with the ***client's or*** customer's insurance demands and needs. ***In case that none of the products is in the best interest of the client or customer, financial advisors should refrain from giving advice or making a recommendation.***

(7) The existing requirements on disclosure of inducements should be further strengthened to ensure that retail investors understand the general concept of inducements, the potential for conflict of interest, as well as the impact of inducements on the overall costs and expected returns.

▌

(9) In order to assess the effectiveness of these measures, ***five*** years after the ***adoption of the regulatory technical standards referred to in Article 16(12)*** of▌ Directive ***2014/65/EU and in Article 25(10) of Directive (EU) 2016/97,*** and after having consulted the European Securities and Markets Authority ('ESMA') and European Insurance and Occupational Pensions Authority ('EIOPA'), the Commission should prepare a report ***assessing strengthened product governance requirements, the potential conflict of interests associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection, the relevance of distribution rules and the implementation of financial literacy measures. If the Commission's assessment does not show that the new provisions have led to positive change for consumers, the Commission may propose amendments to this Directive, if necessary.***

(10) ***Both quantitative and qualitative elements, which may include sustainability factors and financial guarantees, and the level of costs and charges that are related to*** investment and insurance-based investment products, can have a significant impact on investment returns▌. To ensure that products offer Value for Money for retail investors, Member States should ensure that firms authorised under Directive ▌ 2014/65***/EU*** or Directive (EU) 2016/97 to manufacture or distribute investment products have clear pricing processes that enable a clear identification

and quantification of all costs charged to retail investors and are designed to ensure that the costs and charges that are included in investment products or that are linked to their distribution are justified and proportionate ***having regard to the target market's objectives and needs, and the product's characteristics, objectives, strategy and performance***.

(10a) ***The access to, use of and expenses for financial and non-financial market data necessary to provide investment services and to manufacture and distribute financial products are an important portion of the costs borne by investment firms, representing therefore a significant proportion of the total charges paid by retail investors. This is why the Commission should be mandated to prepare a report five years after the entry into force of this Directive, after consulting ESMA and national competent authorities, to assess whether providers of financial and non-financial market data should be included in the scope of this Directive.***

(11) Since the charging structure of the packaged retail investment product is designed by the manufacturer, it is for the manufacturer to assess whether the costs and charges that are included in investment products are justified and proportionate ***in the context of the overall value delivered***. Building on those assessments, distributors should make similar assessments, so that the costs of distribution and other costs not already included in the manufacturer's assessment are additionally taken into account.

(12) The pricing process, conducted at both the level of manufacturer and distributor should, as part of the product governance framework, enhance the existing concept that investment products aimed at a particular target market should be designed to bring value to that target market.

(13) To make the pricing process more objective and to equip manufacturers, distributors and competent authorities with a tool allowing for an efficient comparison of costs among investment products from the same product type, both ESMA and EIOPA should, ***after consulting the national competent authorities and on the basis of industry testing,*** develop ***common European benchmarks for products manufactured and distributed in more than one Member State. The benchmarks should be used solely by national competent authorities as a supervisory tool to perform the assessment of the qualitative and quantitative features of the products and to identify potential outliers on the market. As a supervisory tool, those benchmarks should not be disclosed publicly and should take into account the qualitative and quantitative features of financial instruments and insurance-based investment products. However, in order to ensure that the supervisory process is transparent and to facilitate***

insurance manufacturers' value-for-money assessment, national competent authorities are allowed to share with insurance manufacturers and distributors the relevant benchmarks for that market. If the product deviates from a relevant benchmark, national competent authorities should have the power to take the necessary corrective actions, including requiring the firm to provide a justification for such deviation, requiring the firm to correct its approach to comply with the product governance requirements and, as a last resort measure, requiring that the product be removed from the market, if necessary.

(13a) Products that are manufactured and distributed in just one Member State should be subject to national benchmarks developed by national competent authorities, following the Union regulatory technical standards, adopted on the basis of drafts developed by ESMA and EIOPA.

(13aa) Benchmarks should not, in any way, lead to a price regulation but should allow for better supervision of the products on the market, with the aim to identify potential outliers and ensure the rectification for the benefit of customers and clients.

(13ab) As part of the product governance requirements, manufacturers and distributors of packaged retail investment products should perform peer-grouping evaluation of their financial instruments, based on a peer group defined by the investment firm and by the insurance undertaking or intermediary respectively, in accordance with the criteria defined in guidelines to be developed by ESMA and EIOPA. In this assessment, distributors may rely on the manufacturer's peer grouping analysis. Additionally, manufacturers should also perform a peer analysis of past performance of their products, and distributors should also perform a peer analysis of services costs.

(13b) To ensure that product governance processes deliver fair value relative to costs and meet the objectives, needs and characteristics of the target market, the product approval process should consider benefits expected to be provided by the investment, when considering the risk profile and the total costs to the clients or customers as defined in Article 50 and Annex II of Commission Delegated Regulation (EU) 2017/565. The benefits should be reasonable, relevant and of a qualitative and quantitative nature, and should not solely be a return expectation after costs but could also be other services provided by the investment firm.

(14) To assist manufacturers and distributors in their assessments, ***ESMA and EIOPA, after having consulted national competent authorities and after industry testing, should develop guidelines***

to specify the criteria to be used in determining whether costs and performance are justified and proportionate.

(15) To enable ESMA and EIOPA to develop reliable benchmarks, based on reliable data, manufacturers and distributors of investment products should be required to report necessary data to competent authorities, for onward transmission to ESMA and EIOPA. To limit, to the greatest extent possible, costs related to the new reporting obligations and to avoid unnecessary duplication, data sets should as far as possible be based on disclosure and reporting obligations stemming from EU law. ESMA and EIOPA should develop regulatory technical standards to determine the ***formats, frequency and starting date*** for the information to be reported.

▌

(17) In view of the extent of diversity of retail investment product offerings, the development of benchmarks by ESMA and EIOPA should be an evolutionary process, beginning with the investment products most commonly purchased by retail investors and progressively building on the experience gathered over time in order to broaden coverage and refine their quality. ***Benchmarks should be regularly updated, taking into account market developments.***

(18) Directives 2009/65/EC and 2011/61/EU require alternative investment funds (AIFs) and undertakings for the collective investment in transferable securities (UCITS) management companies to act ▌ in the best interests of the investment fund they manage and of their investors. AIFs and UCITS management companies should ***maintain a pricing process that ensures that*** investors ***are not charged any costs that are undue, and that any costs that are borne by investors are justified and proportionate in the context if the overall value delivered to s***.

(19) UCITS and AIFs management companies should compensate investors where undue costs have been charged, including where costs have been miscalculated to the detriment of investors, and inform the competent authorities, financial auditors of the investment funds and their managers, and the depositary of those funds thereof. To promote better enforcement and achieve concrete results for retail investors, harmonisation of Member States' administrative and sanctioning powers is necessary. The ***procedure to determine the level of compensation where undue costs have been charged*** should be ***established on the basis of the national competent authorities' existing guidelines on indemnification procedures***.

(20) The pricing process under Directives 2009/65/EC and 2011/61/EU should ensure that costs borne by retail investors are justified and proportionate ***in the context of the overall value delivered to unit -holders and having regard*** to the characteristics of the product, and in particular to the investment objective***, policy*** and strategy, level of risk and expected returns of the funds, so that UCITS and AIFs deliver Value for Money to investors. UCITS and AIFs management companies should remain responsible for the quality of their pricing process. In particular, they should ensure that costs are comparable to ***similar*** market ***products***, including by comparing the costs of funds with similar ***characteristics in terms of*** investment strategies***, objectives, level of risk*** and ***other*** characteristics. ***National competent authorities should have supervisory powers to carry out regular checks on the alignment of UCITs and AIFs falling under Directive 2014/65/EU with the relevant benchmarks, and take corrective actions if necessary.***

(21) The Commission should be empowered to adopt delegated acts specifying the minimum requirements for the pricing process to prevent undue costs from being charged to the UCITS, AIFs and their unit-holders, and for carrying out the Value for Money assessment and, where needed, for taking corrective measures where costs ***borne by investors*** are not justified or proportionate ***in the context of the overall value delivered to unit-holders***.

(22) ***Enhancing the quality of the advice given by financial advisors is one of the main objectives of this Directive.*** Knowledge and competence of staff are key to ***better ensure the*** quality ***of*** advice ***given to consumers in the Union***. The standards of what is considered necessary vary significantly between advisors operating under Directive 2014/65/EU, Directive (EU) 2016/97 and under non-harmonised national law. To improve the quality of advice and to ensure a level playing field across the EU, strengthened minimum common standards on the necessary knowledge and competence requirements should be laid down. That is particularly relevant given the increased complexity and continuous innovation in the design of financial instruments and insurance-based investment products, and the increasing importance of sustainability-related considerations. Member States should require investment firms, and insurance and reinsurance distributors, to ensure that natural persons giving investment advice on behalf of the investment firm or as insurance intermediaries, and the employees concerned of insurance undertakings and insurance intermediaries, possess the knowledge and competence that is necessary to fulfil their obligations. To provide assurance to clients, customers and competent

authorities that the level of knowledge and competence of such natural persons and insurance intermediaries and the employees of insurance undertakings and insurance intermediaries meet the required standards, such knowledge and competence should be proven by a certificate ***or any other document recognised by the Union or by Member States***. Regular professional development and training are important to ensure that the knowledge and competence of staff advising on or selling investment products to clients, or insurance-based investment products to customers, is maintained and updated. To that end, it is necessary to require that natural persons giving investment advice follow a minimum number of hours per year of professional training and development, ***part of which should be dedicated to sustainability issues,*** and that they prove the successful completion of such training and development by a certificate.

(23) The increasing provision of investment services via digital means creates new opportunities for retail investors. At the same time, those services enable investment firms and insurance distributors to distribute investment products and services faster and to a wider group of retail investors, which can entail additional risks. Competent authorities should therefore be equipped with powers and procedures that are adequate to promptly address any non-compliance with existing rules, including when provided via digital means and by unauthorised entities. It is therefore appropriate that competent authorities are able to take the necessary actions when they have well-founded reasons to believe that a natural or legal person is providing investment services without being duly authorised or an insurance intermediary or insurance undertaking is distributing insurance-based investment products without being registered or authorised. When those actions concern a natural person, the publication of the decision made by the competent authority should remain subject to the case-by-case assessment of the proportionality of the publication of personal data provided under Article 71(1). The competent authorities should inform ESMA and EIOPA about such behaviour, and ESMA and EIOPA should consolidate and publish all related decisions issued by competent authorities so that such information is available to retail investors for them to be able to identify potential frauds. As regards natural persons, in order to avoid the disclosure of personal information deemed disproportionate by a competent authority when publishing the consolidated list of all decisions issued by competent authorities, ESMA and EIOPA should abstain from disclosing any additional information compared to that disclosed by the competent authority itself.

(24) The provision of cross-border investment services is essential for the development of the Capital Markets Union and proper enforcement of the rules is a key element of the single market. While the home Member State is responsible for the supervision of an investment firm in cases of cross-border provision of services, the single market relies on trust that stems from the adequate supervision of investment firms by the home competent authorities. The principle of mutual recognition requires efficient cooperation between home and host Member States to ensure that a sufficient level of investor protection is maintained. Directive (EU) 2014/65 already provides for a mechanism that allows, under strict conditions and where the home Member State does not take appropriate action, competent authorities of host Member States to take precautionary measures to protect investors. To facilitate cooperation between competent authorities, and to further strengthen the supervisory efforts, that mechanism should be simplified and those competent authorities that observe highly similar or identical behaviours on their territory to those already signalled by another authority should be able to refer to the findings of that initiating authority to initiate a procedure under Article 86 of Directive (EU) 2014/65.

(24a) The Capital Markets Union enables undertakings established in the Union to exercise their rights under the freedom to provide services and the freedom of establishment, provided that they comply with certain conditions. To avoid abuses of those principles, rules should be introduced to establish an anti-forum shopping principle in Directives 2014/65/EU and (EU) 2016/97.

(24b) Recital 46 of Directive 2014/65/EU clarifies that Member States' competent authorities should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried out clearly indicate that an investment firm has opted for the legal system of one Member State for the purpose of avoiding the stricter standards or supervisory enforcement in another Member State within the territory of which it intends to carry out or does carry out the greater part of its activities.

(25) Passport notifications under Directives (EU) 2014/65 and (EU) 2016/97 do not require that information on the scale of the cross-border services is provided. To provide ESMA, EIOPA and competent authorities with a proper understanding of the extent of cross-border services and to enable them to adapt their supervisory activities to those cross-border services, competent

authorities should collect information on the provision of such services. Where an investment firm or an insurance intermediary provides services to clients located in another Member State, the investment firm or insurance intermediary should provide its competent authority with basic information on those services. For proportionality purposes, this reporting requirement should not apply to firms serving fewer than fifty clients on a cross-border basis. Competent authorities should make that information available to ESMA and EIOPA, who should in turn make the information accessible to all competent authorities and publish an annual statistical report on cross-border services. To limit, to the greatest extent possible, costs related to the reporting obligations related to cross-border activities and to avoid unnecessary duplication, information should as far as possible be based on existing disclosure and reporting obligations.

(26) To foster supervisory convergence and facilitate cooperation between competent authorities, ESMA should be able to set up cooperation platforms on its own initiative, or at the initiative of one or more competent authorities, where justified concerns exist about investor detriment related to the provision of cross-border investment services, and where such activities are significant with respect to the market of the host Member State. EIOPA, which already has the power to set up collaboration platforms under Article 152b of Directive 2009/138/EC, should have the same power with regard to insurance distribution activities under Directive (EU) 2016/97 since similar cross border supervision issues may occur in insurance distribution. Where ***personal data is to be processed under the collaboration platforms, competent authorities, ESMA and EIOPA are to comply with Regulation (EU) 2016/679. Where*** there are serious concerns about potential investor detriment and where the supervisory authorities involved in the collaboration platforms cannot reach an agreement on issues related to an investment firm or insurance distributor which is operating on a cross-border basis, ESMA and EIOPA may in accordance with Article 16 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[8] and Regulation (EU) No 1094/2010 of the European Parliament and of the Council[9], respectively, issue a recommendation to the competent authority of the

---

8 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p.48).

9 Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets

home Member State to consider the concerns of the other relevant competent authorities, and to launch a joint on-site inspection together with other competent authorities concerned.

(27) Costs, associated charges and third-party payments linked to investment products can have a great impact on expected returns. The disclosure of such costs associated charges and third-party payments are a key aspect of investor protection. Retail investors should be presented with clear information on costs, associated charges and third-party payments, in good time prior to taking an investment decision. To enhance comparability of such costs, associated charges and third-party payments, such information should be provided in a standardised manner ***and in comprehensible language***. Regulatory technical standards should specify and harmonise the content and format of disclosures relating to such costs, associated charges and third-party payments including ***the standard terminology and brief and concise*** explanations***, and the methodology to calculate the percentage of overall costs,*** that investment firms should provide to retail clients, in particular as regards the third-party payments.

(28) To further increase transparency, retail clients and customers should receive a periodic overview of their investments. For that reason, firms that provide investment services together with a service of safekeeping and administration of financial instruments, or insurance intermediaries and insurance undertakings distributing insurance-based investment products, should provide an annual statement to their retail clients and customers which should include an overview of the products those clients and customers hold, of all costs, associated charges and third-party payments, and of all payments, including dividends and the interests paid and received by the client and customer over a period of one year, together with an overview of the performance of the ***client's or customer's portfolio***. That annual statement should enable retail investors to get a better understanding of the impact of those elements on the performance of their portfolio. For investment services that only consist of the reception, transmission and execution of orders, the annual statement should contain all costs, associated charges and third-party payments paid in connection with the services and the financial instruments. For services that only consist of safekeeping and administration of financial instruments, the annual statement should contain all costs, associated charges and payments received by the client in

---

Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p.84).

relation to the services and the financial instruments. For all those services, the service provider should provide the retail client upon request with a detailed breakdown of that information per financial instrument. In view of the long-term characteristics of insurance-based investment products which are often used for retirement purposes, the annual statement for such products should contain additional elements, including ▌ projections of the expected outcome at the end of the contract, or recommended holding period and a summary of the insurance cover.

(29) Diverging or overlapping disclosure requirements for the distribution of insurance products across different legal acts is a cause for legal uncertainty and unnecessary cost for insurance undertakings and insurance intermediaries. It is therefore appropriate to set out all disclosure requirements in one legal act by removing such requirements from Directive 2009/138/EC and by amending Directive (EU) 2016/97. At the same time, building on the experiences gained in the supervision of these requirements, it is appropriate to adapt them so that they are effective and comprehensive. Complementing the already well-established insurance product information document for non-life insurance products, an insurance product information document should also be in place for life insurance products other than insurance-based investment products to provide standardised information. For insurance-based investment products, standard information should be provided by the PRIIPs key information document under Regulation (EU) No 1286/2014.

(30) Changes in the manner by which investment firms, insurance undertakings and insurance intermediaries advertise financial products and services, including the use of influencers, social media and the use of behavioural biases, increasingly affect retail investors' behaviour. It is therefore appropriate to introduce requirements for marketing communication and practices, which may also include third-party content, design, promotions, branding, campaigning, product placement and reward schemes. Those requirements should in particular specify what the requirement to be fair, clear and not misleading entails in the context of marketing communications and practices. Requirements for a balanced presentation of risks and benefits, and suitability for the intended target audience, should also help to improve the application of investor protection principles. Those requirements should extend to marketing practices, where those practices are used to enhance marketing communications' reach and effectiveness, or the perception of their relatability, reliability, or comparability. However, to ensure that providers of investment products are not discouraged or prevented from providing financial educational

material and from promoting and improving the financial literacy of investors, it should be specified that such materials and activities do not fall under the definition of marketing communication and marketing practice.

(31) To address developments in marketing practices, including the use of third parties***, such as so-called finfluencers,*** for indirect promotion of products or services, and to ensure an appropriate level of investor protection, it is necessary to strengthen the requirements regarding marketing communications. It is therefore necessary to require that marketing communications should enable the easy identification of the investment firm, insurance undertaking or insurance intermediary on whose behalf the marketing communications are made. For retail clients, such marketing communications should also contain essential information presented in a clear and balanced manner, on the products and services on offer. To ensure that investor protection obligations are properly applied in practice, investment firms should have a policy on marketing communications and practices and adequate internal controls and reporting procedures to the investment firms' management body to ensure compliance with such policy. When developing marketing communications and practices, investment firms, insurance intermediaries and insurance undertakings should take into account the target audience of the target market concerned.

(31a) Younger generations are the most vulnerable to digital mis-selling. Although the rise of finfluencers can be positive in terms of promoting financial education to a wider audience, it is essential to ensure sufficient safeguards so as to create a safe investment environment for each Union citizen. Trust in Union financial markets is a key factor in encouraging potential investors to invest in them.

(32) The rapid pace at which marketing communications and practices can be provided and changed, in particular through the use of digital tools and channels, should not prevent the adequate enforcement of applicable regulatory requirements. It is therefore necessary that Member States ensure that national competent authorities have the necessary powers to supervise and where necessary intervene in a timely manner. In addition, competent authorities should have access to the necessary information related to marketing communications and practices to perform their supervisory and enforcement duties and ensure consumer protection. For that purpose, investment firms and insurance undertakings should keep records of marketing communications provided or made accessible to retail clients or potential retail client and any related elements

relevant for competent authorities. To capture marketing communications disseminated by third parties, such as for instance influencers and advertisement agencies, it is necessary that details on such third parties' identity are also recorded. As issues with financial products and services may arise several years after the investment, investment firms, insurance undertakings and insurance intermediaries should keep records of the above information for ***at least the duration of their relationship with the client or customer***.

(32a) Investment firms, insurance undertakings and insurance intermediaries which make use of finfluencers to carry out their marketing communication should establish a written agreement with the finfluencers laying out the content of their contractual relationship, namely the scope and nature of the activities carried out. They should also provide the competent authority upon request with the identity and contact details of the finfluencers whose services they rely on, and should regularly operate controls over the activities carried out by the finfluencers to ensure the finfluencers' compliance with this Directive.

(33) The suitability and appropriateness assessments are an essential element of investor protection. Investment firms, insurance undertakings and insurance intermediaries should assess the suitability or appropriateness of investment products and services recommended to or demanded by the client, respectively, on the basis of information obtained from the client. Where necessary, the investment firm, insurance undertaking or insurance intermediary, may also use information that they may have obtained on the basis of other legitimate reasons, including existing relationships with the client or customer. The investment firms, insurance undertakings and insurance intermediaries should explain to their clients and customers the purpose of these assessments and the importance of providing accurate and complete information. They should inform their clients and customers, through standardised warnings, that providing inaccurate and incomplete information may have negative consequences on the quality of the assessment. To ensure harmonisation and efficiency of the different warnings, ESMA and EIOPA should develop regulatory technical standards to specify the content and format of such warnings.

(34) To ensure that, in the context of advised services, due consideration is given to portfolio diversification, financial advisors should be systematically required to consider the needs of such diversification for their clients or customers, as part of the suitability assessments, including on their existing portfolio ***to the extent that the client or customer discloses its existing portfolio at the request of the firm***.

(35) To ensure that appropriateness tests enable investment firms, insurance undertakings and insurance intermediaries to effectively assess if a financial product or service is appropriate for their clients and customers, those firms, insurance undertakings and insurance intermediaries should obtain from them information not only about their knowledge and experience on such financial instruments or services, but for retail clients or customers also about their capacity to bear full or partial losses, ▌ their risk tolerance***, investment needs and objectives, including sustainability preferences***. In the case of a negative appropriateness assessment, an investment firm, insurance undertaking or insurance intermediary distributor should, in addition to the obligation to provide a warning to the client or customer, only be allowed to proceed with the transaction where the client or customer concerned explicitly request so.

(36) A wide diversity of financial instruments can be offered to retail investors, with each financial instrument entailing different levels of risks of potential losses. Retail investors should therefore be able to easily identify investment products that are particularly risky ***or complex***. It is therefore appropriate to require that investment firms, insurance undertakings and insurance intermediaries identify those investment products that are particularly risky ***or complex*** and include, in information transmitted to retail clients and customers, including marketing communications, warnings on those risks. To assist investment firms, insurance undertakings and insurance intermediaries in identifying such particularly risky ***or complex*** products, ESMA and EIOPA ***should develop draft regulatory technical standards*** on how to identify such products, taking due account of the different types of existing investment products and insurance-based investment products. To harmonise such risk warnings across the EU, ESMA and EIOPA should submit technical standards as regards the content and format of such risk warnings. Member States should empower competent authorities to impose the use of risk warnings for specific investment products and, where the use or absence of use of those risk warnings throughout the EU would be inconsistent or would create a material impact in terms of investor protection, ESMA and EIOPA should have the power to impose the use of such warnings by investment firms throughout the EU.

(36a) Financial literacy is of key importance in addressing the current deficiencies in the Capital Markets Union (CMU) and in ensuring the adequate fulfilment of the CMU goals. Trust in Union financial markets is intrinsically linked to the level of participation in those markets by retail clients. Education and knowledge are tools to empower each citizen to make informed

investment decisions. However, the level of financial literacy differs significantly across Member States. This Directive should lay the ground for increasing the level of financial education in each Member State. In view of the limited competences conferred upon the Union in that area, it is the responsibility of each Member State to ensure that proper adjustments are made, particularly in their education systems, to comply with this Directive. Member States should take ambitious steps to fulfil the obligations laid down in this Directive.

(37) Increasing the level of financial literacy of retail clients and customers, and of prospective retail clients and potential customers, is key to providing those retail clients and customers with a better understanding of how to invest responsibly, to adequately balance the risks and benefits involved with investing. Member States should therefore promote formal and informal learning measures that support the financial literacy of retail clients and customers, and of prospective retail clients and potential customers in relation to responsible investing. Investing responsibly refers to retail investors' ability to make informed investment decisions in line with their personal and financial objectives, provided that they are aware of the range of available investment products and services, their key features, and the risks and benefits involved with investing, and provided that they understand the investment advice they receive and are able to react to it appropriately. Prospective retail investors should be able to access educational material that supports their financial literacy at all times, and the material should in particular take account of differences in age, education levels and the technological capabilities of retail investors. That is in particular relevant for retail clients and customers that access financial instruments, investment services, and insurance-based investment products for the first time, and those using digital tools.

(38) It is necessary to ensure that the criteria for determining whether a client ***or customer*** possesses the necessary experience, knowledge and expertise to be treated as a professional client where such client requests such treatment, are appropriate and fit for purpose. The identification criteria should therefore also take into account experience gathered ▌***in*** the financial services sector ***or in another relevant sector*** and certified training and education that the client has completed. ***That experience, training and education should not be combined only with the size of the client's financial portfolio.*** The identification criteria should also be proportionate and not discriminatory with respect to the Member State of residence of the client. The criteria

based on wealth and size of a legal entity should therefore be amended to account for clients residing in Member States with lower average GDP per capita.

(39) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on [XX XX 2023].

(40) Regulation (EU) 2016/679 of the European Parliament and of the Council applies to the processing of personal data for the purposes of this Directive. Regulation (EU) 2018/1725 of the European Parliament and of the Council applies to the processing of personal data by the Union institutions and bodies for the purposes of this Directive. Member States should ensure that processing of data carried out in application of this Directive fully respects Directive 2002/58/EC of the European Parliament and of the Council where that Directive is applicable.

(41) Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 should therefore be amended accordingly.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) in Article 1(4), point (a) is replaced by the following:

‘(a) Article 9(3), Article 14, and Article 16(2), (3) and (6), Article 16-a (1), first, second and fifth subparagraph, Article 16-a(3), Article 16-a(4), first and second subparagraph, Article 16-a(7), (8), (10) and Article 16-a(11), point (b);’;

(2) in Article 3(2), points (b) and (c) are replaced by the following:

‘(b) conduct of business obligations as established in Article 24(1), (1a), Article 24(3), (4), (5), (7) and (10), Article 25(2), (4), (5) and (6), and, where the national regime allows those persons to appoint tied agents, Article 29, and the respective implementing measures;

(c) organisational requirements as laid down in the Article 16(3), (6), (7), Article 16-a (1), subparagraphs 1, 2 and 5, Article 16-a(3), Article 16-a(4), subparagraphs 1 and 2, Article 16-a(7) point (c), (8), (10) and Article 16(11), point (b), and the corresponding delegated acts adopted by the Commission in accordance with Article 89.’;

(3) in Article 4(1), the following points (66), (67) and (68) are added:

'(66) 'marketing communication' means any disclosure of information other than a disclosure required by Union or national law, or other than the financial education material referred to in Article 88b, or other than investment research that meet the conditions to be treated as such, that directly or indirectly promotes or entices investments in one or several financial instruments or categories of financial instruments or the use of investment or ancillary services provided by an investment firm that is made:

(a) by an investment firm or a third party that is remunerated or incentivised through non-monetary compensation by such investment firm;

(b) to natural or legal persons;

(c) in any form and by any means;

(67) 'marketing practice' means any strategy, use of a tool or technique applied by an investment firm, or by any third party that is remunerated or incentivised through non-monetary compensation by such investment firm to:

(a) directly or indirectly disseminate marketing communications;

(b) accelerate or improve the reach and effectiveness of the marketing communications;

(c) promote in any way investment firms, financial instruments or investment services;

(68) 'online interface' means any software, including a website, part of a website or an application, ***including a mobile application;***

(68a) 'finfluencer' means a natural or legal person carrying out a commercial influence activity by mobilising their popularity to communicate to the public, by electronic means and for any sort of remuneration as defined in Article 2, point (5), of Delegated Regulation (EU) 2017/565, content aimed at promoting, directly or indirectly, financial products or contracts;';

(3a) Article 5(4), point (a) is replaced by the following:

'*(a) any investment firm which is a legal person has its head office in the same Member State as its registered office, in which it carries out its business, operates fully within the single market and utilises the freedom to provide services. The Member State shall ensure that the investment firm has sufficient understanding of the risk and legal requirements to*

which it or its clients are subject, and acts in a manner consistent with Union law and the principles of the single market;';

(4) the following Article 5a is inserted:

'Article 5a

Procedure to address unauthorised activities offered through digital means

1. Member States shall ensure that where a natural or legal person provides investment services or activities online targeting clients within its territory without being authorised under Article 5(1) or national law or where a competent authority has reasonable grounds to suspect that that entity provides such services without being authorised under Article 5(1) or national law, the competent authority takes all appropriate and proportionate measures to prevent the offering of the unauthorised investment services or activities, including related to marketing communication, by resorting to the supervisory powers referred to in Article 69(2). Any such steps shall respect the principles of cooperation between Member States set out in Chapter II.

   The first subparagraph of this paragraph shall also apply to finfluencers that are remunerated or incentivised through non-monetary compensation by a firm which is not authorised under Article 5(1) or national law, where such finfluencer promotes through public social media platforms services or financial instruments on behalf of such a firm.

2. Member States shall provide that competent authorities publish any decision imposing a measure taken pursuant to paragraph 1, in accordance with Article 71.

   Competent authorities shall inform ESMA of any such decision without undue delay. ESMA shall establish an electronic database containing the decisions submitted by competent authorities, which shall be accessible to all competent authorities. ESMA shall publish a list of all existing decisions, describing the natural or legal persons concerned and the types of services or products provided. The list shall be accessible to the public through a link on ESMA's website. As regards natural persons, this list shall not lead to the publication of more personal data of those natural persons than that published by the competent authority pursuant to the first subparagraph, and in accordance with Article 71(1).';

(5) Article 7 is amended as follows:

   (a) in paragraph 3, the following subparagraph is added:

‘Where the authorisation has not been granted, the competent authority shall inform ESMA about the reasons for not granting the authorisation ***without undue delay***.’;

(b) the following paragraph 3a is inserted:

‘3a. ESMA shall establish and make available to competent authorities a list of all entities that have been refused authorisation.

The list shall contain information on the services or activities for which each investment firm has sought authorisation, as well as the reasons for the refusal to grant the authorisation and shall be updated on a regular basis.’;

(6) Article 8 is amended as follows:

(a) the second paragraph is replaced by the following:

‘Every withdrawal of authorisation shall be notified to ESMA***, without undue delay***. The competent authority shall inform ESMA about the reasons for withdrawing the authorisation.’;

(b) the following paragraph is added:

‘The list referred to in Article 7(3a) shall also contain all entities from which authorisation has been withdrawn, as well as information on the services or activities for which each investment firm has been withdrawn authorisation, and the reasons to withdraw the authorisation.’;

(7) Article 9(3) is amended as follows:

(a) the first subparagraph is replaced by the following:

‘Member States shall ensure that the management body of an investment firm defines, oversees and is accountable for the implementation of the governance arrangements that ensure effective and prudent management of the investment firm including the segregation of duties in the investment firm, the prevention of conflicts of interest and the protection of investors, and in a manner that promotes the integrity of the market and the best interest of clients.’;

(aa) in the second subparagraph, point (a) is replaced by the following:

'(a) the organisation of the firm for the provision of investment services and activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with. The policy shall ensure that the monetary and non-monetary benefits to the clients are taken into consideration;';

(b) in the second subparagraph, the following point (d) is added:

'(d) a policy on marketing communications and practices, aiming to ensure compliance with obligations set out in Article 24c.';

(8) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The home Member State shall require that investment firms comply with the organisational requirements laid down in paragraphs 2 to 10 of this Article, Article 16a and in Article 17.';

(b) in paragraph 3, subparagraphs 2 to 7 are deleted;

(c) the following paragraph 3a is inserted:

▌

(d) the following paragraph 7a is inserted:

'7a. Member States shall ensure that investment firms establish appropriate procedures and arrangements, including electronic communication channels, to ensure that client's rights under this Directive can be exercised without restriction and that client's complaints▌ are dealt with properly ***and without undue delay***. Those procedures shall allow investors to register complaints in any language in which communication material or services were provided. ***In addition to such*** language, ▌ the firm and its clients ***may,*** prior to entering into any transaction***, agree on the use of an additional language for the purpose of registering complaints***. In all cases, complaints shall be registered and complainants shall receive replies within ***a delay proportionate to the subject matter of the complaint, and in any case no later than 30*** working days ***after a complaint is registered***. ***Any final response shall be made in paper form or through another durable medium, in the language in which the complaints***

were registered.';

(9) the following Article 16-a is inserted after Article 16:

'Article 16-a

Product governance requirements

1. Member States shall ensure that investment firms which manufacture financial instruments for sale to clients establish, maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients (the product approval process).

   The product approval process shall contain all of the following:

   (a) a specification of an identified target market of end-clients within the relevant category of clients for each financial instrument;

   (b) a clear identification of the target market's objectives and needs;

   (c) an assessment of whether the financial instrument is designed appropriately to meet the target market's objectives and needs;

   (d) an assessment of all relevant risks to the identified target market and that the intended distribution strategy is consistent with the identified target market;

   (e) in relation to financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council*, ***and which are made available to retail clients, a clear assessment and description of both quantitative and qualitative features of the financial product, including:***

   i)all costs and charges related to the financial instrument,

   ii) ▌ whether those costs and charges are justified and proportionate, having regard to the ***target market's objectives and needs, and the product's*** characteristics, objectives,▌ strategy ***and*** performance ('pricing process').

   iii) additional product features and services that could impact the value and benefits provided to investors.

For the purposes of the second subparagraph, point (a), the manufacturer shall, as part of the target market definition, assess the type of clients to whom the product is targeted, the knowledge and experience level needed to understand the product, the ability to bear losses, the risk tolerance and whether the product allows the target market to:

(a) smoothly manage short-term finances to meet short-term needs;

(b) absorb economic shocks; or

(c) reach future long term goals.

▌

The product approval process shall ensure that the investment firm takes the clients' best interest into consideration in the manufacturing of the financial instruments and takes into account the intended monetary and non-monetary benefits to the customer.

An investment firm shall regularly review the financial instruments it manufactures, taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains consistent with the objectives, needs and characteristics of the target market.

An investment firm which manufactures financial instruments shall make available to distributors all information on the financial instrument and the product approval process that is needed to fully understand that instrument and the elements taken into consideration during the product approval process, including complete and accurate details on any costs and charges***, features, objectives, strategy and performance*** of the financial instrument.

1a. Investment firms shall ensure that compliance reports to the management body systematically include information about the financial instruments manufactured by the firm, including information on the distribution strategy and the intended monetary and non-monetary benefits to the clients related to the financial instruments. Investment firms shall make the reports available to their competent authority upon request.

▌

3. An investment firm that offers or recommends financial instruments which it does not manufacture, shall have in place adequate arrangements to obtain the information referred to in paragraph 1 and to understand the characteristics and identified target market of each financial instrument.

4. An investment firm ***that offers or recommends financial instruments*** shall regularly review ***them,*** taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains consistent with the objectives and needs of the identified target market and ***whether the monetary and non-monetary benefits are still relevant for the identified target market and reasonable compared to the costs and charges. The firm shall also consider*** whether the intended distribution strategy remains appropriate.

   An investment firm which offers or recommends financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall:

   (a) identify and quantify ▌ any further costs and charges ***related to the distribution*** not already taken into account by the manufacturer, ***including entry costs, exit costs and third-party payments received and retained by the distributor***;

   (b) assess whether the total costs and charges ***incurred for the distribution of the product, including those associated with the investment advice provided to the client,*** are justified and proportionate, having regard to the ***characteristics of the instrument, to the service provided and the*** target market's objectives and needs (pricing process).

   (ba) assess additional product features and services that could impact the value and benefits provided to investors.

   ▌

4a. Member States shall ensure that investment firms consider, when complying with the product governance requirements, that the financial instrument's costs and charges are compatible with the objectives, needs and characteristics of the target market.

Where an investment firm manufactures or distributes financial instruments falling under the

definition of packaged retail investment products in Article 4, point (1), of Regulation (EU) No 1286/2014, it shall perform a peer grouping analysis in accordance with this paragraph. In their assessment, distributers may rely on the manufacturer's peer grouping analysis.

An investment firm which manufactures financial instruments shall in addition perform a peer analysis of historical performance when performing a product review of packaged retail investment products as defined in Article 4, point (1), of Regulation (EU) No 1286/2014.

An investment firm that offers or recommends financial instruments shall in addition perform a peer analysis of service costs based on an internal analysis of relevant peers in the market.

The peer grouping evaluation shall be performed on the basis of a peer group defined by the investment firm. The investment firm shall substantiate and document the choice and definition of the peer group. If the product falls under the definition of a UCITS in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council, or of an AIF in Article 4(1), point (a), of Directive 2011/61/EU of the European Parliament and of the Council, the peer group may be based on the relevant European fund classification system in accordance with Directive 2009/65/EC of the European Parliament and of the Council or Directive 2011/61/EU of the European Parliament and of the Council.

ESMA shall by ... [12 months after the entry into force of this amending Directive], develop guidelines on the process and criteria used by investment firms to carry out their peer grouping evaluation, and shall periodically update those guidelines.

I

7. An investment firm shall document all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the ***justification and demonstration of the proportionality of costs and charges of the financial instrument.***

In accordance with the information to be disclosed under Article 24b of this Directive, an investment firm which manufactures, offers or recommends financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall report to the competent authorities details of costs and charges of any financial instrument destined for retail investors, including where relevant, distribution costs incorporated in the costs of the financial instrument and costs related to the distribution of advice. The competent authorities shall transmit such data without undue delay to ESMA.

ESMA, after having consulted EIOPA and the competent authorities and after industry testing, shall develop draft regulatory technical standards for the application of the requirements in this paragraph to specify the following:

(a) in accordance with the information to be disclosed under Article 24b, the content and type of data to be reported to the competent authorities, based on existing disclosure and reporting obligations;

(b) the formats, frequency and starting date for the information to be reported in accordance with the information to be disclosed under Article 24b.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [18 months after the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.

8. An investment firm which manufactures and offers or recommends the financial instrument may establish one pricing process relating to both manufacturing and distribution stages.

I

10. The policies, processes and arrangements referred to in paragraph 1 to 9 shall be without prejudice to all other requirements under this Directive and Regulation (EU) No 600/2014, including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interests, and third-party payments.

11. ***ESMA shall, by ... [12 months after the entry into force of the amending Directive], develop guidelines to specify criteria to determine whether costs and charges are justified and proportionate, and it shall periodically update those guidelines.***

▌

13. By ... [five years after the date of application of this amending Directive], Member States shall communicate to the Commission and ESMA all relevant information concerning the implementation of this Article. The Commission and ESMA may request additional information from national competent authorities.

On the basis of this information provided by Member States, the Commission, in consultation with ESMA and EIOPA, shall carry out an evaluation of the effective implementation of this Article and assess in particular:

(a) whether the effects of strengthened product governance requirements set out in this article have led to better value for money for citizens;

(b) the impact of the relevant provisions of this Directive on potential conflicts of interest associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection and the relevance of distribution rules;

(c) the implementation of financial literacy measures.

If the evaluation carried out by the Commission proves that the implementation of the new product governance requirements set out in this Article provides no positive change for consumers, the Commission shall accompany its report by a legislative proposal to amend this Directive, if appropriate.

(10) Article 16a is replaced by the following:

'Article 16a

Exemptions from product governance requirements

An investment firm shall be exempted from the requirements set out in the Article 16-a(1) and in Article 24(2), where the investment service it provides relates to bonds with no

other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties.';

(11) in Article 21, the following paragraphs 3 and 4 are added:

'3. ESMA or the competent authority of any host Member State on the territory of which a firm is active may request that the competent authority of the home Member State examines whether that firm still meets the conditions for authorisation as established in Chapter I.

ESMA shall be made aware of such request. The competent authority of the home Member State shall communicate its findings to the competent authority of the host Member State and ESMA within two months following the request.

4. In the case of justified concerns about potential threats to investor protection, ESMA may, on its own initiative or at the request of one or more of the competent authorities, set up and coordinate a collaboration platform under the conditions set out in Article 87a.';

(12) Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following :

'1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in this Article and Articles 24a to Article 25.';

(b) the following paragraph 1a is inserted:

'1a. Member States shall ensure that, in order to act in the best interest of the client, when providing investment advice to retail clients, investment firms are under ***an*** obligation:

(a) ***to inform the client of the range of financial instruments assessed by the investment firm, and*** to provide advice on the basis of an assessment of an appropriate range of financial instruments ***suited to the clients's needs, whereby the range of financial instruments is adapted to the business model of the investment firm***;

(b) to recommend the most ▌efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and

offering similar features, ***taking into consideration its performance, level of risk, qualitative elements, costs and charges reported pursuant to Article 16-a, and, if an equivalent product with higher costs is recommended, to justify this on objective grounds and keep records of that justification***;

▌

(ca) not to place the investment firm's financial or other interests ahead of the client's interests.

1b. Where investment firms are subject to an inducement ban, the conditions of this Article shall be presumed to be fulfilled. The national competent authority may reverse this presumption if an investment firm does not comply with the provisions in this Article.

ESMA may organise and conduct a mandatory peer review in cooperation with national competent authorities regarding the implementation of the obligations described in this Article.

1c. Where none of the financial instruments offered by the investment firm is in the best interest of the client, the investment firm shall refrain from giving any advice or making any recommendation.

(c) in paragraph 2, the first subparagraph is replaced by the following:

'Member States shall ensure that investment firms which manufacture financial instruments for sale to clients:

(a) design those financial instruments to meet the needs of an identified target market of end clients within the relevant category of clients;

(b) design their strategy for the distribution of the financial instruments, including in terms of marketing communication and marketing practices, in a way that is compatible with the identified target market;

(c) take reasonable steps to ensure that the financial instruments are distributed to the identified target market.';

(d) paragraph 3 is replaced by the following:

'All information, addressed by the investment firm to clients or potential clients shall be fair,

clear and not misleading.';

(e) paragraph 4 is amended as follows:

(i) the first subparagraph is amended as follows:

- the introductory wording is replaced by the following:

'Appropriate information shall be provided in good time prior to the provision of any service or the conclusion of any transaction to clients or potential clients with regard to the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges. That information shall include the following:';

- in point (a), the following points (iv) and (v) are added:

'(iv) where the investment firm provides independent advice to a retail client, whether the range of financial instruments that is recommended is restricted or not to well-diversified, non-complex as referred to in article 25(4)(a) and cost-efficient financial instruments only;

(v) how the recommended financial instruments take into account the diversification of the ***retail*** client's portfolio;'

- points (b) and (c) are replaced by the following:

'(b) the information on financial instruments and proposed investment strategies (including for diversification purpose) must include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies and whether the financial instrument is intended for retail or professional clients, taking account of the identified target market in accordance with paragraph 2;'

'(c) the information on costs and charges as referred to in Article 24b;';

- the following point (d) is added:

'(d) where the services are provided under the right of establishment or the freedom to provide services:

(i) the Member State in which the head office of the investment firm and,

where appropriate, the branch offering the service is/are located;

(ii) the relevant national competent ***authorities*** of such investment firm or where relevant, of such branch.';

(ii) the second, third and fourth subparagraphs are deleted;

(f) paragraph 5 is replaced by the following:

'5. The information referred to in paragraph 4 shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. Where this Directive does not require the use of a standardised format for the provision of that information, Member States may require that information to be provided in a standardised format.';

(g) the following paragraphs 5b and 5c are inserted:

'5b. ESMA shall, by [2 years after the entry into force of the amending Directive], where necessary on the basis of prior consumer and industry testing, and after consulting EIOPA, develop ***draft regulatory technical standards*** to assist investment firms that provide any information to retail clients in an electronic format to design such disclosures in a suitable way for the average member of the group to whom they are directed***, and shall update those standards periodically***.

The ***draft regulatory technical standards*** referred to in the first subparagraph shall specify the following:

(a) the presentation and format of the disclosures in electronic format, considering the various designs and channels that investment firms may use to inform their clients or potential clients;

(b) necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the client;

(c) necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by clients in a durable medium.

ESMA shall submit those draft regulatory technical standards to the Commission by ...

[two years after the date of entry into force of this amending directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No 1095/2010.

5c. Member States shall ensure that investment firms display appropriate warnings in information materials, including marketing communications, provided to retail clients or potential retail clients, to alert on the specific risks of potential losses carried by particularly risky ***or complex*** financial instruments.

ESMA shall, ***after consulting the competent authorities and stakeholders*** by [18 months after the entry into force of the amending Directive], develop ***draft regulatory technical standards*** on the concept of particularly risky ***or complex*** financial instruments***, and update them periodically***. ***Those regulatory technical standards shall describe the characteristics of financial products that make them particularly risky or complex and which justify making them subject to the risk warnings referred to in the first subparagraph***.

ESMA shall ***also*** develop draft regulatory technical standards to further specify the format and content of such risk warnings ***to retail clients***, taking due account of the specificities of the different types of financial instruments and types of communications.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the ***second and*** third subparagraph***s*** in accordance with Article10 of Regulation (EU) No 1095/2010.

ESMA shall monitor the consistent application of risk warnings throughout the Union. In case of concerns regarding the use, or absence of use or supervision of the use of such risk

warnings in Member States, that may have a material impact on the investor protection, ESMA, after having consulted the competent authorities concerned, may impose the use of risk warnings by investment firms.';

(ga) in paragraph 7, point (b) is amended as follows:

'(b) not accept or retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients in line with Article 24a. Minor non-monetary benefits capable of enhancing the quality of service provided to a client and of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client or of a total value below EUR 100 per annum shall be clearly disclosed and shall be excluded from this point.';

▌

(i) paragraphs 8, 9 and 9a are deleted;

(ia) in paragraph 12, the first subparagraph is amended as follows:

'Member States may, in exceptional cases, impose additional requirements on investment firms in respect of the matters covered by Article 24 and 24ce. Such requirements shall be objectively justified and proportionate so as to address specific risks to investor protection or to market integrity which are of particular importance in the circumstances of the market structure of that Member State.';

(j) in paragraph 13, the first subparagraph is amended as follows:

(i) the introductory wording is replaced by the following:

'The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in this Article ▌ when providing investment or ancillary services to their clients, including:';

(ii) point (d) is replaced by the following:

'(d) the criteria to assess compliance of firms providing investment advice to retail clients▌ with the obligation to act in the best interest of their clients as set out in paragraphs 1 and 1a.';

(13) the following Articles 24a, 24b, 24c and 24d are inserted:

‘*Article 24a*

Inducements

1. Member States shall ensure that investment firms, when providing portfolio management, do not ***accept and retain fees, commissions or any monetary or*** non-monetary benefit***s***, ***paid or provided by any third party or a person acting on behalf of a third party in relation to*** the provision of ***the*** service ***to*** client***s***.

5. Paragraph 1 shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum or of a scale and nature such that they could not be judged to impair compliance with the investment firm’s duty to act in the best interest of the client, provided that they have been clearly disclosed to the client.

6. ***The*** provision of research by third parties to ***an*** investment firm providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under Article 24(1) if:

   (a) an agreement has been entered into between the investment firm and the ***third-party*** provider ***of research and execution services, establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services***;

   (b) the investment firm ***makes available to its clients its policy on separate or joint payments, as the case may be, for execution services and third-party research, including the type of information that may be provided in each case and, where relevant, how the investment firm prevents or manages conflicts of interest pursuant to Article 23 when providing joint payments for execution services and research;***

   (c) the ***investment firm assesses, on an annual basis, the quality, usability and value of the research used, as well as the ability of the research used to contribute to better investment decisions; ESMA may develop guidelines for investment firms for the purpose of conducting those assessments.***

For the purpose of this Article, research shall be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or as covering research material or services closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that industry or market.

Research shall also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of financial instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value to the investment firm's decisions on behalf of clients being charged for that research.

7. Where the investment firm is not prohibited from getting or paying fees or benefits, from or to a third-party, in connection with services provided to its clients, it shall ensure that the reception or payment of such fees or benefits does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients. The existence, nature and amount of such third-party payment(s) shall be disclosed in accordance with Article 24b(1).

   Where applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service.

   The payment or benefit which enables or is necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the investment firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients, is not subject to the requirements set out in the first subparagraph.

I

Article 24b

Information on costs, associated charges and third-party payments

1. Member States shall ensure that investment firms provide clients or potential clients in good time prior to the provision of any investment services and ancillary services, and in good time prior to the conclusion of any transaction on financial instruments with information, in the required format, on all costs, associated charges and third-party payments related to those services, financial instruments or transactions.

Information about costs and charges which are not caused by the occurrence of underlying market risk shall be aggregated. Investment firms shall explicitly inform their clients of their right to request the provision of an itemised breakdown and shall provide such an itemised breakdown at the request of the client. The information on those costs, associated charges and third-party payments shall include all of the following:

(a) all explicit and implicit, and associated charges, ***including all costs and charges relating to the distribution of the financial instrument, and the cost of advice, where relevant,*** charged by the investment firms or other parties where the client has been directed to such other parties, for the investment services and/or ancillary services provided to the client or potential client;

(b) all costs and associated charges associated with the manufacturing and managing of any financial instrument recommended or marketed to the client or potential client;

(c) any third-party payments paid or received by the firm in connection with the investment services provided to the client or potential client;

(d) ***options on*** how the client may pay for them.

Member States shall ensure that investment firms aggregate the information on all costs and associated charges to enable the ***retail*** client to understand the overall cost, of the financial instruments . ***For retail clients,*** Member States shall ensure that investment firms express the overall cost in monetary terms and percentages calculated ***over the following periods:***

- for financial instruments ***which are packaged retail investment products, over*** the holding period recommended by the investment firm,
- ***for other financial instruments, up to the maturity date of the financial instrument;***
- ***for financial instruments without a maturity date, and which are not packaged retail***

investment products, over a holding period of one year.

The information referred to in the second subparagraph, points (a) to (c), shall be accompanied by an appropriate explanation, in a standard and comprehensible language for a retail client, on the impact of the costs, charges and any third-party payments on the expected return.

The third-party payments paid or received by the investment firm in connection with the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such third-party payments, including any recurring third-party payments, on the net return over the holding period as mentioned in the preceding subparagraph. The purpose of the third-party payments and their impact on the net return shall be explained in a standardised way and in a comprehensible language for ***a*** retail client.

Where the amount of ▌third-party payments cannot be ascertained prior to the provision of the relevant investment or ancillary service, the method of calculating the amount shall be clearly disclosed to the ***retail*** client in a manner that is comprehensible, accurate and understandable for ***a*** retail client. ***The firm shall also provide its clients with information on the exact amount of the third-party payments received or paid on an ex-post basis.***

2. ***ESMA shall, after*** having ***consulted EIOPA and after conducting*** consumer and industry testing ▌develop draft regulatory technical standards to specify all of the following:

   (a) the relevant format for the provision of any costs, associated charges and third-party payments, by the investment firm to its retail client or potential retail client, prior to the ***provision of any investment services, ancillary services, and the*** conclusion of any transaction on financial instruments;

   (b) the standard terminology and ***brief and consise*** related explanations to be used by investment firms for the disclosure and calculation of any costs, associated charges

and third-party payments charged directly or indirectly by firms to the ***retail*** client or potential ***retail*** client in connection with the provision of any investment service(s) or ancillary service(s) and the manufacturing and managing of financial instruments to be recommended or marketed to the ***retail*** client or potential ***retail*** client. ***The e***xplanations shall ensure that they are likely to be understood by any retail client without specific knowledge on financial instruments.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation. (EU) No 1095/2010.

3. Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the information on costs, charges ***and third-party payments***, the investment firm may provide the information on costs**,** charges ***and third-party payments*** either in electronic format or on paper, where requested by a retail client, without undue delay after the conclusion of the transaction, provided that the following conditions are met:

   (a) the client has consented to receiving the information without undue delay after the conclusion of the transaction;

   (b) the investment firm has given the client the option of delaying the conclusion of the transaction until the client has received the information.

   The investment firm shall be required to give the client the option of receiving the information on costs and charges over the phone prior to the conclusion of the transaction.

4. Without prejudice to other requirements associated to portfolio management services, when providing any investment service to a retail client together with a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall, in connection with those instruments, provide its retail client with an annual statement with the following information expressed in monetary terms and percentages:

   (a) all implicit and explicit costs and associated charges paid or borne annually by the retail client for the total portfolio, with a split between:

(i) the costs associated with the provision of any investment or ancillary service, as applicable, by the investment firm to the retail client;

(ii) the costs associated to the manufacturing and managing of the financial instruments held by the retail client;

(iii) if any, the payments received by the firm from, or paid to, third parties in connection with the investment services provided to the retail client;

(b) the total amount of dividends, interest and other payments received annually by the retail client for the total portfolio;

(c) the total taxes, ▌ borne by the retail client for the total portfolio;

(d) the annual market value, or estimated value, when the market value is not available, of each financial instrument included in the retail client's portfolio;

(e) the net annual performance of the portfolio of the retail client and, ***upon request,*** the annual performance of each of the financial instruments included in this portfolio.

Where providing an investment service without a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement including applicable information on point (a).

Where providing exclusively a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide an annual statement including applicable information on point (a), (b), (c) and (d).

Investment firms shall inform retail clients explicitly about the possibility to ask for a detailed breakdown of the information referred to under point (a) to (c) above per financial instrument owned during the relevant period ***and shall provide such an itemised breakdown at the request of the client. When several investment firms need to provide an annual statement to the client, it is sufficient to provide one statement that contains all the information foreseen in the second and third subparagraph***.

Without prejudice to the requirement in this paragraph, where sufficient information is not available on a specific product to draw up an annual statement, the requirements with

respect to the annual statement shall only be applicable to contracts concluded after the entry into force of Directive ... / .... [insert the number of this amending Directive].

The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. Information on costs, associated charges and any third-party payments shall be presented using the terminology and explanations ***and the calculation methodology specified in the regulatory technical standards referred to in*** paragraph 2 of this Article.

5. ***Upon request by the retail client, it shall not be necessary to provide t***he annual statement referred to in paragraph 4 ***if*** the investment firm provides its retail clients with access to an online system, which qualifies as a durable medium, where up-to-date statements with the relevant disclosure per instrument as required under paragraph 4 can be easily accessed by the retail client and the firm has evidence that the client has accessed those statements at least once per year.

Article 24c

Marketing Communications and Practices

1. Member States shall ensure that marketing communications are clearly identifiable as such and clearly identify the investment firms responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by the investment firm.

2. Member States shall ensure that marketing communications are developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target ***market clients*** and where related to a specific financial instrument to the target market identified pursuant to Article 24(2).

   All marketing communications shall present in a prominent and concise way, the essential characteristics of the financial instruments or the investment services and related ancillary services to which they refer.

   The information shall be made accessible, depending on the characteristics of the medium, via a nested display, scroll over, through QR-code, or similar.

The presentation of the essential characteristics of the financial instruments and services ***made available*** in the marketing communications provided or made accessible to retail or potential retail clients, shall ensure that they can easily understand the key features of the financial instruments or services as well as the ***costs and*** main risks associated with them.

3. Member States shall ensure that marketing practices are developed and used in a manner that is fair and not misleading, and shall be appropriate for the target ***market. Member States shall ensure that investment firms carrying out profiling of individuals for the purpose of this paragraph, fully comply with Regulation (EU) 2016/679***.

4. Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by ***a*** distributor, the manufacturer shall be responsible for the content of such marketing communication and its update. The distributor shall be responsible for the use of this marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified for the target market.

   Where an investment firm ***that*** offers or recommends financial instruments which it does not manufacture, organises its own marketing communication, it shall be fully responsible for its appropriate content, update and use, in line with the identified target market and in particular in line with the identified client categorisation.

4a. Where an investment firm uses the services of a finfluencer, that investment firm shall:

(a) establish a written agreement with the finfluencer determining the nature and scope of the activity to be carried out on behalf of the firm;

(b) upon request, provide the competent authority with the identity and contact details of the finfluencer on whose services it relies to the competent authority;

(c) regularly verify whether the activity of the finfluencer whose services it relies on complies with paragraphs 1 to 4.

5. Member States shall ensure, ***that*** investment firms make annual reports to the firm's management body on the use of marketing communications and strategies aimed at marketing practices, the compliance with relevant obligations on marketing communications and practices under this Directive and on any signalled irregularities and proposed solutions.

6. Member States shall ensure that national competent authorities can take timely and effective action in relation to any marketing communication ***disseminated in their territory*** or marketing practice ***taking place in their territory*** that do not comply with requirements ***laid down in*** paragraphs 1 to 3.

7. Records to be kept by the investment firm according to Article 16(6) shall include all marketing communications provided or made accessible to retail clients or potential retail clients, by the investment firm or any third party remunerated or incentivised through non-monetary compensation by the investment firm.

   Such records shall be retained for at least the duration of the relationship between the investment firm and the customer. Those records shall be retrievable by the investment firm upon request of the competent authority.

   The records referred to in the first subparagraph shall contain all of the following:

   (a) the content of the marketing communication;

   (b) details about the medium used for the marketing communication;

   (c) the date and duration of the marketing communication including relevant starting and end times;

   (d) the targeted retail client segments or profiling determinants;

   (e) the Member States where the marketing communication is made available;

   (f) the identity of any third party involved in the dissemination of the marketing communication.

   Records of such identity referred to in point (f) shall contain the legal names, registered addresses, contact details and where relevant social media handle of the natural or legal persons concerned.

8. The Commission is empowered to adopt a delegated act in accordance with Article 89 to supplement this Directive by specifying[redacted] :

   (a) the essential characteristics of financial instrument(s) or investment and ancillary service(s) to be disclosed in all marketing communications targeting retail clients or potential retail clients and any other relevant criteria to ensure that those essential

characteristics appear in a prominent way and are easily accessible by an average retail client, regardless of the means of communication;

(b) the conditions with which marketing communications and marketing practices should comply in order to be fair, clear, not misleading, balanced in terms of presentation of advantages, ***costs*** and risks, and appropriate in terms of content and distribution channels for the target audience or, where applicable, the target market.

Article 24d

Professional requirements

1. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Articles 24, 24a, 24b, 24c and Article 25 and maintain and update that knowledge and competence by undertaking regular professional development and training including specific training where new financial instruments and investment services are being offered by the firm. Member States shall have in place and publish the criteria to be used for assessing effectively such knowledge and competence.

2. For the purpose of paragraph 1, Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice to clients on behalf of the investment firm possess and maintain at least the knowledge and competence set out in Annex V and undertake at least 15 hours of professional training and development per year, ***during work hours. Member States shall have in place and publish mechanisms to control effectively and assess the knowledge and competence of natural persons giving investment advice to clients on behalf of investment firms. The mechanisms shall in particular define in which cases additional hours of professional training and development are to be required from those persons beyond the minimum of 15 hours per year, based on the assessment of knowledge and competence. An appropriate number of hours of professional training shall be allocated by national competent authorities to the minimum necessary knowledge in sustainable investments contributing to an environmental or social objective, including how to consider and integrate sustainability factors and clients' sustainability preferences into the advisory processes. Member States may provide that continuing vocational***

training acquired and required as a part of another professional qualification can be considered valid. Member States may require that compliance with the criteria set out in Annex V as well as the yearly successful completion of the continuous professional training and development shall be proven by a certificate ***or any other document recognised by the Union or a Member State***.

The Commission is empowered to amend this Directive by adopting a delegated act in accordance with Article 89, to review, where necessary, the requirements set out in Annex V.';

(14) Article 25 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

'1. The investment firm shall assess the suitability or appropriateness of the relevant financial instruments(s) or investment services or transaction(s) to be recommended to, or demanded by, his or her client or potential client in good time before respectively i) the provision of the investment advice or portfolio management or ii) the execution or reception and transmission of the order. Each of these assessments shall be determined on the basis of information about the client or potential client as obtained by the investment firm, in accordance with the below requirements.

The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or potential client before any information is requested from him or her. The clients and potential clients shall be warned of the following consequences:

(a) the provision of inaccurate or incomplete information shall impact negatively the quality of the assessment to be made by the investment firm;

(b) the absence of information shall prevent the firm to determine whether the service or financial instrument envisaged is suitable or appropriate for them and to proceed with the recommendation or the execution of the client's order. Such explanation and warning shall be provided in a standardised format.

The investment firm shall, upon request of the retail client, provide them with a report on the information collected for the purpose of the suitability or appropriateness

assessment. Such report shall be presented in a standardised format.

ESMA shall develop draft regulatory technical standards to determine the explanation and warning referred to in paragraph 1, second subparagraph, and the format and content of the report referred to in paragraph 1, third subparagraph.

ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is conferred to the Commission to adopt those regulatory technical standards referred to above in the fourth subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation. (EU) No 1095/2010.

2. Subject to the second subparagraph, when providing investment advice or portfolio management services, the investment firm shall obtain the necessary information regarding the client or potential client's knowledge and experience in the investment field relevant to the specific type of product or service ***and*** client's financial situation, including,

- ***to the extent disclosed by the client upon request of the firm,*** the composition of any existing portfolios,
- its ability to bear full or partial losses,
- investment needs and objectives including sustainability preferences, if any, and
- risk tolerance, so as to enable the investment firm to recommend to the client or potential client the investment services or financial instruments that are suitable for that person, and, in particular, are in accordance with its risk tolerance, ability to bear losses***, its sustainability preferences*** and need for portfolio diversification.

Investment firms inform clients that there are different types of investment advice. On this ground, clients can decide which type of advice they want to receive.

Member States shall ensure that where an investment firm provides investment advice recommending a package of services or products bundled pursuant to Article 24(11), the overall bundled package is suitable.

When providing either investment advice or portfolio management that involves the

switching of financial instruments, investment firms shall obtain the necessary information on the client's investment and shall analyse the costs and benefits of the switching of financial instruments. When providing investment advice, investment firms shall inform the client whether or not the benefits of the switching of financial instruments are greater than the costs involved in such switching.

3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 2, ask the ***retail*** client or potential ***retail*** client to provide information regarding their knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded, so as to enable the investment firm to assess whether the investment service(s) or financial instrument(s) envisaged is appropriate for the client.

Where a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate.

Where the investment firm assesses on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. ***When the service is provided to a retail client, t***hat warning shall be provided in a standardised format and shall be recorded.

The investment firm shall not proceed with a transaction subject to a warning indicating that the product of service is not appropriate, unless the client asks to proceed with it despite such warning. Both demand of the client and acceptance of the firm shall be recorded

ESMA shall develop draft regulatory technical standards to determine the format and content of the warning ***to retail clients*** referred to in subparagraph 3.

ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is conferred to the Commission to adopt those regulatory technical standards in accordance with Articles 10 of Regulation. (EU) No 1095/2010.';

(b) in paragraph 4, the following subparagraphs are added:

‘ESMA shall develop draft regulatory technical standards to determine the format and content of warning ***to retail clients*** referred to in the first subparagraph, point (c).

ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is conferred to the Commission to adopt those regulatory technical standards as referred to above in accordance with Articles 10 of Regulation. (EU) No 1095/2010.’;

(c) in paragraph 6, second subparagraph, the following sentence is added:

‘The provision of such statement shall be made sufficiently in advance before the conclusion of the transaction to ensure, except if otherwise instructed, that the client gets enough time to review it, and where necessary, obtain additional information or clarifications from the investment firm.’;

(d) paragraph 8 is replaced by the following:

‘8. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in paragraphs 1 to 6 of this Article when providing investment or ancillary services to their clients, including information to obtain when assessing the suitability or appropriateness of the services and financial instruments for their clients, criteria to assess non-complex financial instruments for the purposes of paragraph 4, point (a)(vi), of this Article, the content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided. Those delegated acts shall take into account:

(a) the nature of the services offered or provided to the client or potential client, having regard to the type, object, size, costs, risks, complexity, price and frequency of the transactions;

(b) the nature of the products being offered or considered, including different types of financial instruments;

(c) the retail or professional nature of the client or potential clients or, in the case of paragraph 6, their classification as eligible counterparties;

(ca) the criteria for assessing the alignment of financial products with a client's sustainability preferences and outlining the procedures for tailoring a portfolio or investment product offering to meet a client's sustainability preferences.';

(14a) in Article 29a, the following paragraph is inserted:

'2a. Investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements of Articles 24 and Article 24b, with such clients. Investment firms shall not be allowed to agree on such limitations with regard to investment advice or portfolio management nor, irrespective of the investment service provided, with regard to financial instruments which embed a derivative.';

(15) Article 30 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

'Member States shall ensure that investment firms authorised to execute orders on behalf of clients, and/or to deal on own account, and/or to receive and transmit orders have the possibility of bringing about or entering into transactions with eligible counterparties without being obliged to comply with Article 16(3a), Article 24, ***Article 24b, article 24c,*** Article 25, Article 27 and Article 28(1), in respect of those transactions or in respect of any ancillary service directly relating to those transactions.';

(b) in paragraph 2, the second subparagraph is replaced by the following:

'Classification as an eligible counterparty under the first subparagraph shall be without prejudice to the right of such entities to request, either on a general form or on a trade-by-trade basis, treatment as clients whose business with the investment firm is subject to Articles 24, 24a, 24b, 24c, 25, 27 and 28.';

(16) the following Article 35a is inserted:

'Article 35a

Reporting of cross-border activities

1. Member States shall require that investment firms and credit institutions providing investment services or activities report the following information annually to the competent authority of

its home Member State when they provide ***cross-border services under the freedom of services or freedom of establishment*** to more than 50 clients on a cross-border basis:

(a) the list of host Member States in which the investment firm is active through the freedom to provide services and activities following a notification pursuant to Article 34(2);

(b) the type, scope and scale of services provided and activities carried out in each ▌Member State through the freedom to provide investment services and activities and ancillary services;

(c) for each ▌Member State, the total number and the categories of clients corresponding to the services and activities referred to in point (b), and provided during the relevant period ending on the 31 December and a breakdown between professional and non-professional clients;

(d) the number of complaints referred to under Article 75 received from clients and interested parties in each ▌Member State;

(e) the type of marketing communications used in ▌Member States.

Competent authorities shall communicate to ESMA all the information collected from investment firms.

2. ESMA shall establish an electronic database containing the information collected pursuant to paragraph 1, which shall be made accessible to all competent authorities.

3. ESMA shall develop draft regulatory technical standards on the details of the information referred to in paragraph 1 that is to be reported by investment firms to competent authorities.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt the regulatory those technical standards in accordance with Article 10 of Regulation (EU) No 1095/2010.

4. ESMA shall develop draft implementing technical standards specifying the data standards and formats, methods and transfer arrangements, frequency and starting date for the information to be reported.

ESMA shall submit those draft implementing technical standards to the Commission by [OJ:

insert date 18 months after the date of entry into force].

Power is conferred on the Commission to adopt the implementing technical standards in accordance with Article 15 of Regulation (EU) No 1095/2010.

5. Based on the information communicated pursuant to paragraph 2, ESMA shall publish every year a report containing anonymized and aggregated statistics on the investment services provided and the activities carried out in the Union through the freedom to provide investment services and activities, as well as an analysis of trends.';

(17) Article 69(2) is amended as follows:

(-a) the following point is inserted:

'(ba) regularly check the alignment of the qualitative and quantitative features of the financial instrument on the market with the relevant benchmarks and, when necessary, take corrective actions in accordance with Article 69a;';

(a) the following point (ca) is inserted:

'(ca) carry out mystery shopping activities;';

(b) the following point (ka) is inserted:

'(ka) suspend or prohibit, for a maximum duration of 1 year, marketing communications or practices used by an investment firm in their Member State, where there are reasonable grounds to believe that this Directive or Regulation (EU) No 600/2014 have been infringed.';

(c) the following points (v) and (w) are inserted:

'(v) take all necessary measures, including by requesting a third party or other public authority to implement such measures, whether on a temporary or permanent basis, to:

(i) remove content or restrict access to an online interface or order the explicit display of a warning to clients when they access an online interface;

(ii) order a hosting service provider to remove, disable or restrict access to an online interface;

(iii) order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it.

(w) to impose the use of risk warnings by investment firms in information materials,

including marketing communications ***provided or made accessible to retail clients or potential retail clients,*** related to particularly risky ***or complex*** financial instruments where those instruments could pose a serious threat to investor protection.';

(wa) use webscraping techniques and tools to collect online data for monitoring, surveillance, detection and investigation purposes;';

(d) the following subparagraphs are added:

'When making use of the powers referred to in point (ka), the competent authority shall notify ESMA. Where such practices or communications are used in more than one Member State, ESMA shall, upon request of at least one competent authority, coordinate actions taken by competent authorities pursuant to point (ka).

The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted pursuant to this Directive shall be appropriate to the nature and the overall actual or potential harm of the infringement.';

(17a) the following article is inserted:

'Article 69a

Benchmarks as a supervisory tool

1. In accordance with Article 16-a, ESMA, on the basis of industry testing and after consulting EIOPA and the national competent authorities, shall, where appropriate, develop common European benchmarks for groups of comparable financial instruments manufactured and distributed in more than one Member State. The benchmarks shall represent reference points for comparable groups of investment products and shall be used by national competent authorities to perform the assessment of the qualitative and quantitative features of investment products manufactured or distributed by investment firms.

ESMA shall regularly update those benchmarks, taking into account the developments on the market.

In specific cases, when national specificities exist which have a direct impact on the key features of a product, such as the costs, performance and qualitative benefits, these shall be taken into account. For this purpose, national competent authorities shall communicate these to ESMA and shall provide guidance on how such features affect the benchmarks, including by providing a range of the impact that such features of the product have on the compliance with the benchmarks.

When the investment product is manufactured and distributed in just one Member State, such product shall be subject to national benchmarks developed by the national competent authority of that Member State. ESMA shall, after consulting EIOPA, develop draft regulatory technical standards on the development of national benchmarks to ensure a harmonized approach within the Union, and shall periodically update those standards.

ESMA shall submit those draft regulatory technical standards to the Commission by [18 months after the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the fourth subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

2. The benchmarks referred to in paragraph 1 shall serve the sole purpose of a supervisory tool for national competent authorities in order to facilitate identification of potential outliers among investment products on the market based on a risk-based approach and to allow them to conduct further inquiry when necessary.

For this purpose, national competent authorities may engage in cooperation with the private sector in order to support their efforts in market screening.

When using this power, national competent authorities shall regularly check the investment products on the market and compare them to the relevant benchmarks. If they identify products that deviate from the benchmark, they may require the investment firm to provide an explanation for that deviation and, if they consider that the explanation duly justifies the deviation, they shall conclude their inquiry with a positive

assessment.

If however, they consider that the explanation does not duly justify the deviation from the benchmark, they may require the investment firm to correct its approach and comply with the product governance requirements in Article 16-a to provide the consumer with the intended qualitative and quantitative features of the concerned investment product. If the company makes such correction, the national competent authorities shall conclude the inquiry with a positive assessment.

Where an investment firm fails to provide an explanation or the explanation does not duly justify the deviation of the product from the benchmark and the company fails to align the qualitative and quantitative features of the product with the relevant benchmark, the national competent authorities may require the investment firm, as a measure of last resort, to remove that product off the market, if necessary.';

(18) in Article 70(3), point (a), the following points (xxxvii) to (xxxxii) are added:

'(xxxvii) Article 16-a(1) to (8);

(xxxviii) Article 24(5a) to (5c) and (11a);

(xxxix) Article 24a(1) to (2) and (6) to (7);

(xxxx) Article 24b(1), (3) and (4);

(xxxxi) Article 24c(1) to (5) and (7);

(xxxxii) Article 35a(1);';

(19) Article 73(1) is amended as follows:

(a) the first subparagraph is replaced by the following:

'Member States shall ensure that competent authorities establish effective mechanisms to enable reporting of potential or actual infringements of Regulation (EU) No 600/2014 and of the national provisions adopted in the implementation of this Directive to competent authorities, including by firms not duly authorised under this Directive.';

(b) in the second subparagraph, point (a) is replaced by the following:

'(a) specific procedures for the receipt of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such

reports. Those procedures shall also include the creation, on the front page of each competent authority's website, of a link to a simple reporting form allowing any person to report potential or actual infringements to Union Law or national law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via this reporting form;';

(20) Article 86 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Where the competent authority of the host Member State (for the purposes of this Article the 'initiating authority') has reasonable grounds for believing that an investment firm acting within its territory under the freedom to provide services infringes the obligations arising from the provisions adopted pursuant to this Directive or that an investment firm that has a branch within its territory infringes the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authority of the host Member State, it shall refer those findings to the competent authority of the home Member State.

Information that such referral is made shall be transmitted to ESMA. ESMA shall transmit such information to the competent authorities of all other host Member States where the investment firm provides investment services or performing activities.

The competent authority of the home Member State shall, without undue delay and at the latest 30 working days after the initiating authority has referred its findings, take the necessary measures or begin the necessary administrative process aimed at taking such measures. The competent authority of the home Member State shall communicate all necessary information on any measure taken to the initiating authority, as well as to ESMA and to the competent authorities of all other Member States on the territory of which the investment firm is active.

If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate or if no measure has been taken, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the following shall apply:

(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing the offending investment firms from initiating any further transactions within their territories. The Commission and ESMA shall be informed of such measures without undue delay, as well as all competent authorities of the host Member States where the offending investment firm is active; and

(b) the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.';

(b) the following paragraphs 1a and 1b are inserted:

'1a. Where the initiating authority has taken precautionary measures against an offending investment firm pursuant to paragraph 1, the competent authority of any other host Member State may, where the same investment firm causes concerns or infringements highly similar or identical to those referred to in the findings of the initiating authority, adopt highly similar or identical measures with respect to that firm, provided that that competent authority also has reasonable grounds for believing that a similar infringement has occurred in its territory.

The competent authority of that other host Member State may do so without first referring findings to the competent authority of the host Member State, but shall inform the competent authority of the home Member State at least five working days before taking such precautionary measures.

The Commission, ESMA and all competent authorities of the host Member States where the offending investment firm is active shall be informed of such measures without undue delay.

1b. Where, within 12 months, one or more competent authorities of host Member States have taken measures pursuant to paragraph 1, fourth subparagraph, point (a), with respect to one or more investment firms having the same home Member

State, or if a home Member States disagrees with the findings of a host Member State, ESMA may set up a cooperation platform in accordance with Article 87a.';

(21) the following Article 87a is inserted:

'Article 87a

Collaboration platforms

1. ESMA may, in the case of justified concerns about negative effects on investors, on its own initiative or at the request of one or more competent authorities, set up and coordinate a collaboration platform, to strengthen the exchange of information and to enhance collaboration between the relevant supervisory authorities where an investment firm carries out, or intends to carry out, activities which are based on the freedom to provide services or the freedom of establishment and where such activities are of relevance with respect to the host Member State's market. If a collaboration platform is set up at the request of a competent authority, that competent authority shall notify the competent authority of the home Member State of its justified concerns about negative effects on investors.
2. Paragraph 1 shall be without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.
3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.
4. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.
5. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010.
6. In the event of disagreement within the platform and where there are serious concerns about negative effects on investors or about the content of an action or inaction to be taken in

relation to an investment firm, ESMA may ***decide to initiate and coordinate joint on-site inspections. ESMA*** shall invite the competent authority of the home Member State ***as well as*** other ***relevant*** competent authorities ***of the collaboration platform to participate in such*** joint on-site inspection .';

(22) the following Title VIa is inserted:

'TITLE VIA

FINANCIAL EDUCATION

Article 88a

Financial education of retail clients and prospective retail clients

1. Member States shall ***define and implement information and educational actions in order to*** promote ***and increase consumers'*** education ***and knowledge*** in relation to responsible investment when accessing investment services or ancillary services.

Member States shall consider the contribution of national competent authorities, universities and relevant stakeholders when designing the educational instruments to promote financial literacy. In that regard, Member States shall duly consider to introduce compulsory teaching content in their national school curricula.

Member States shall establish programmes to fund consumer organisations, independent investor or shareholder organisations that support the education of retail clients and potential retail clients in relation to responsible investment when accessing investment services or ancillary services.

1a. National competent authorities shall engage in a dialogue and carry out, at their own initiative, peer reviews to assess the applicability of best practices to their national system.

1b. The Commission, in collaboration with the European Supervisory Authorities (ESAs), the European Investment Bank and the European Central Bank shall:

(a) facilitate cooperation and exchange of best practices among Member States

and stakeholders active in education and finance;

(b) establish clear targets on financial literacy;

(c) establish a Platform on Financial education and literacy which shall be composed of representatives of:

- the European Central Bank;

- the European Investment Bank;

- the ESAs;

- each Member State, in the education and finance sectors, designated by the national competent authorities;

- European and national consumer associations;

- European financial industry federations.

International organisations, and other public and private stakeholders may be invited on an ad hoc basis.

The Platform shall be chaired by the Commission. Representatives shall be appointed for a two-year renewable mandate.

Member States shall promote and take measures for the development of financial literacy skills.

By ... [PO please insert the date = 12 months after the entry into force of this amending Directive] and every three years thereafter, Member States shall report to the Commission on the implementation on paragraph 1. The Commission shall issue guidelines regarding the scope of such reports.

By [PO please insert the date = 12 months after the entry into force of this amending Directive] and every five years thereafter, the Commission shall submit a report to the European Parliament and the Council on the implementation of measures in relation to paragraph 1, outlining the best practices, the possible way forward as well as the observed evolution and results between each report.

1c. Member states are encouraged to:

(a) coordinate and cooperate on matters related to financial education at

Union level, such as through the use of the open methods of coordination and joint exchanges on best practices between the finance ministers of the Union and the education ministers of the Union, as well as with other Union institutions;

(b) promote financial education and training, including through lifelong learning opportunities at national level, such as public-private partnerships, and through mentoring programmes.

The Commission and Member States shall aim at strengthening the cooperation in the field of financial education within the European Education Area, as for example through the Erasmus+ Teacher Academies initiative. Member States are encouraged to use the existing tools and EU funding programmes at Union and national level in order to promote, support and enable financial education and training, and to ensure the mutual recognition of diplomas across the Union.

Article 88b

Financial education and marketing communication

Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote or entice investment in one or several financial instruments, or categories thereof, or specific investment services, shall not be deemed to constitute a marketing communication for the purposes of this Directive.';

(23) Article 89, is replaced by the following:

'1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 2(3), Article 2(4), Article 4(1)(2), second subparagraph, Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12) Article 23(4), Article 24(5c), Article 24(13), Article24b(2), Article 24c(8), Article24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) shall be conferred on the Commission for an

indeterminate period of time from 2 July 2014.

3. The delegation of power referred to in Article 2(3), Article 2(4), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12), Article 23(4), Article 24(5c), Article 24(13), Article24b(2), Article 24c(8), Article24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 2(3), Article 2(4), second subparagraph of Article 4(1)(2), Article 4(2), Article 13(1), Article 16(12), Article 16-a(11), Article 16-a(12), Article 23(4), Article 24(5c), Article 24(13), Article24b(2), Article 24c(8), Article24d(2), Article 25(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), Article 35a(3), Article 35a(4), Article 52(4), Article 54(4), Article 58(6), Article 64(7), Article 65(7) and Article 79(8)) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three 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 three months at the initiative of the European Parliament or of the Council.';

(23a) in Article 90, paragraph 5 is added:

'5. By ... [5 years after the entry into force of this Directive], the Commission shall prepare a report, after consulting ESMA and the national competent authorities, assessing whether

providers of financial and non-financial market data should be included in the scope of this Directive. The Commission shall take into account market developments and the relevant evidence at its disposal. The report shall in particular assess:

(a) the evolution of the number and the diversity of financial and non-financial market data providers;

(b) the adequacy of the requirements for financial and non-financial market data providers established outside the Union to operate in the Union;

(c) the functioning of the market of financial and non-financial market data providers in the Union, including potential conflicts of interests, and its supervision by ESMA.

Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal to amend this Directive.';

(24) Annex II is amended as set out in Annex I to this Directive.

(25) Annex V is added as set out in Annex II to this Directive.

Article 2

Amendments to Directive (EU) 2016/97

Directive (EU) 2016/97 is amended as follows:

(-1) In Article 1(6), the first and the second paragraph are replaced by the following:

'Without prejudice to intra-group relationships where an insurance intermediary or reinsurance intermediary established in a third country carries out insurance or reinsurance distribution activities on behalf of a registered insurance intermediary or reinsurance intermediary in the Union acting on its behalf or having close links with such third-country insurance intermediary or reinsurance intermediary, Member States shall require insurance intermediaries and reinsurance intermediaries registered in a third country to establish a branch in their territory and apply for registration in accordance with Article 3 in order to take up and pursue insurance or reinsurance distribution activities as defined in Article 2(1), points (1) and (2), in the relevant Member State. With respect to the operation of intra-group relationships, Member States shall ensure that any registered insurance intermediary or reinsurance intermediary acting on behalf of or having close links with an insurance intermediary or reinsurance intermediary in a third country, which is unable to demonstrate to the competent authority of the home Member State:

(a) during the process of registration under Article 3 or on the basis of a regular review of the validity of the registration under Article 3(4), fifth subparagraph, that it has an appropriate level of corporate substance in that Member State, namely that it possesses appropriate knowledge and ability in order to complete its tasks and perform its duties adequately in accordance with Article 3(4), fourth subparagraph and Article 10(1), shall not be allowed to take up and pursue insurance distribution activities as defined in Article 2(1), point (1), in that Member State or if already registered in that Member State, shall be removed from the register in accordance with Article 3(4), sixth subparagraph; and

(b) without prejudice to situations in which an appropriate level of corporate substance is demonstrated to the competent authority of the home Member State under subparagraph (i), the establishment of a branch of an insurance or reinsurance intermediary established in a third country with the primary purpose of providing an insurance or reinsurance distribution activity.';

(1) Article 2(1) is amended as follows:

(a) in point (4), point (c) is replaced by the following:

'(c) the insurance products concerned do not cover life insurance or liability risks, except for cover of liability risks complementing a good or service which the intermediary provides as its principal professional activity;'

(b) point (8) is replaced by the following:

'(8) 'insurance distributor' means any insurance intermediary, ancillary insurance intermediary or any insurance undertaking engaging in insurance distribution activities;'

(c) the following points (19) to (22) are added:

'(19) 'electronic format' means any durable medium other than paper;

(20) 'marketing communication' means any disclosure of information other than a disclosure required by Union or national law or other than the financial education material referred to in Article 16b, that directly or indirectly promotes insurance products or directly or indirectly entices investments in insurance-based investment products and that is made:

(a) by an insurance undertaking or insurance intermediary, or by a third party that is

remunerated, or incentivised through non-monetary compensation, by such insurance undertaking or insurance intermediary;

(b) to natural or legal persons;

(c) in any form and by any means;

(20a) 'finfluencer" means a natural or legal person carrying out a commercial influence activity by mobilizing their popularity to communicate to the public, by electronic means and for any sort of remuneration as defined in Article 2, point (5), of Delegated Regulation (EU) 2017/565, content aimed at promoting, directly or indirectly, financial products or contracts;

(21) 'marketing practice' means any strategy, use of a tool or technique applied by an insurance undertaking or insurance intermediary, or by any third party that is remunerated or incentivised through non-monetary compensation by such insurance firm or insurance intermediary to:

(a) directly or indirectly disseminate marketing communications;

(b) accelerate or improve the reach and effectiveness of marketing communications;

(c) promote in any way the insurance undertakings, insurance intermediaries or insurance products;

(22) 'online interface' means any software, including a website, part of a website, or an application***, including mobile application***.';

(2) Article 3 is amended as follows:

(-a) in paragraph 4, the fourth paragraph is replaced by the following:

'Home Member States shall ensure that the registration of insurance, reinsurance and ancillary insurance intermediaries is made subject to the fulfilment of the relevant requirements laid down in Article 10, including the requirement for an insurance or reinsurance intermediary to have an appropriate level of corporate substance with respect to an intra-group relationship with a branch of a registered insurance or reinsurance intermediary in a third country in accordance with Article 1(6).';

(a) in paragraph 4, in the sixth subparagraph, the second sentence is replaced by the following:

‘Where applicable, the home Member State shall inform the host Member State of such removal immediately.’;

(b) in paragraph 5, the following subparagraph is added:

‘Where the registration is refused or where an insurance, reinsurance or ancillary insurance intermediary is removed from the register, the competent authority shall communicate its decision to the applicant or the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and inform EIOPA about the reasons for such refusal of registration or removal from the register.’;

(c) the following paragraph 5a is inserted:

‘5a. EIOPA shall establish and make available to competent authorities a list of all insurance, reinsurance or ancillary insurance intermediaries whose registration has been refused or which have been removed from the register by a competent authority.

The list referred to in the first subparagraph shall contain, where applicable, information on the services or activities for which each insurance, reinsurance or ancillary insurance intermediary has sought registration, as well as the reasons for the refusal of registration or the removal from the register and shall be updated on regular basis.’;

(d) in paragraph 7, the following subparagraphs are added:

‘Member States shall ensure that competent authorities uphold the integrity of the internal market when making their decision to grant or refuse registration to an insurance, reinsurance or ancillary insurance intermediary, which is a legal person.

Where an insurance or ancillary insurance intermediary, which is a legal person, has its head office in the same Member State as its registered office but provides or performs investment activities solely in other Member States, Member States shall ensure that the insurance, or ancillary insurance intermediary has a sufficient understanding of the risk and legal requirements to which it or its customers are subject, and acts in a manner consistent with Union law and the principles of the internal market, refraining from imposing restrictions on undertakings providing

cross-border services in line with those principles.

Member States shall ensure that the competent authority of the home Member State collaborates with the competent authority of the host Member State when assessing the fulfilment of the first subparagraph.';

(3) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. A competent authority of the host Member State that has reasonable grounds to consider that an insurance, reinsurance or ancillary insurance intermediary acting within its territory under the freedom to provide services infringes the obligations arising from the provisions adopted pursuant to this Directive, shall inform the competent authority of the home Member State thereof ***without undue delay***.

The competent authority of the host Member State shall inform EIOPA about the fact that it has informed the home Member State of its considerations. EIOPA shall forward such information to the competent authorities of all other host Member States where the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services.

After having assessed the information received pursuant to the first subparagraph, the competent authority of the home Member State shall, where applicable, take appropriate measures to remedy the situation at the earliest opportunity, and at the latest 30 working days after having received the communication from the competent authority of the host Member State. The competent authority of the home Member State shall inform the competent authority of the host Member State of any such measures taken. The competent authority of the home Member State shall communicate to the competent authority of the host Member State, and to the competent authorities of all other Member States on the territory of which the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services, all relevant information on the measure taken.

Where, despite the measures taken by the competent authority of the home Member State or

because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of host Member State consumers on a large scale, or to the orderly functioning of insurance and reinsurance markets, the competent authority of the host Member State may, after having informed the competent authority of the home Member State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business within its territory.';

(b) paragraph 3 is replaced by the following:

'The competent authorities of the host Member State shall communicate to the insurance, reinsurance or ancillary insurance intermediary concerned any measure adopted under paragraphs 1 and 2 in a well-reasoned document and notify those measures to the competent authority of the home Member State without undue delay. The competent authority of the host Member State shall also notify those measures to the Commission, EIOPA and to the competent authorities of the host Member States where the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services.';

(c) the following paragraph 4 is added:

'4. Where, within 12 months, two or more competent authorities of host Member States have taken measures pursuant to paragraph 1 with respect to one or more insurance, reinsurance or ancillary insurance intermediaries having the same home Member State, or if a home Member State disagrees with the findings of a host Member State, EIOPA may set up a cooperation platform in accordance with Article 12b.';

(4) the following Article 9a is inserted:

'Article 9a

Reporting of cross-border activities

1. Member States shall require that insurance distributors report the following information annually to the competent authority of their home Member State where they pursue ***cross-border activities under the freedom of services or the freedom of establishment*** with more than 50 customers on a cross-border basis:

(a) the list of host Member States in which the insurance distributor is acting under the freedom to provide services or the freedom of establishment;

(b) the scale and scope of the insurance distribution activities carried out in each ▌ Member State;

(c) the type of insurance products distributed in each ▌ Member State;

(d) for each ▌ Member State, the total number of customers, for the relevant period ending on the 31 December;

(e) the number of complaints received from customers and interested parties in each ▌ Member State.

Competent authorities shall communicate to EIOPA all information reported by insurance distributors pursuant to the first subparagraph.

2. EIOPA shall establish an electronic database containing the information reported pursuant to paragraph 1, second subparagraph. That database shall be made accessible to all competent authorities.

3. EIOPA shall develop draft regulatory technical standards regarding the details of the information referred to in paragraph 1.

EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 of Regulation (EU) No 1094/2010.

4. EIOPA shall develop draft implementing technical standards specifying the data standards and formats, methods and transfer arrangements, frequency and starting date for the information to be reported and communicated pursuant to paragraph 1.

EIOPA shall submit those draft implementing technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force of this Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5. Based on the information communicated pursuant to paragraph 2, EIOPA shall publish every year a report containing anonymised and aggregated statistics on the insurance distribution activities carried out in the Union through the freedom to provide services, as well as an analysis of trends.';

(5) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Home Member States shall ensure that insurance and reinsurance distributors and employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities possess the necessary knowledge and competence in order to complete their tasks and perform their duties adequately.

In the context of an intra-group relationship with a branch of a registered insurance or reinsurance intermediary in a third country, the competent authority of the home Member State shall assess whether the registered insurance or reinsurance intermediary has an appropriate level of corporate substance in the home Member State in accordance with Article 1(6) by considering whether the insurance intermediary or reinsurance intermediary, including its employees where the insurance or reinsurance intermediary is a legal person, has appropriate knowledge and ability in order to complete its tasks and perform its duties adequately.;'

(b) paragraph 2 is amended as follows:

(i) the first, second and third subparagraphs are replaced by the following:

'Home Member States shall ensure that insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings and employees of insurance and reinsurance intermediaries maintain and update their knowledge and competence by undertaking regular professional development and training, including specific training where new insurance products or services are being offered by the insurance or reinsurance undertakings and intermediaries.

For the purpose of the first subparagraph, home Member States shall have in place and publish mechanisms to control effectively and assess the knowledge and competence

of insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings and employees of insurance and reinsurance intermediaries, as set out in Annex I, based on at least 15 hours of professional training or development per year, ***during work hours*** taking into account the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance or reinsurance distributor. ***The mechanisms shall in particular define in which cases additional hours of professional training and development are to be required from an employee or intermediary beyond the minimum of 15 hours per year, based on the assessment of knowledge and competence. An appropriate number of hours of the professional training of employees of insurance and reinsurance undertakings and insurance and reinsurance intermediaries providing advice on insurance-based investment products shall be allocated by national competent authorities to the minimum necessary knowledge in sustainable investments contributing to an environmental or social objective, including how to consider and integrate sustainability factors and clients' sustainability preferences into the advisory processes.***

For small intermediaries which distribute both financial instruments and insurance-based investment products, Member States may provide for specific requirements regarding the number of hours of professional training.

Home Member States shall require that compliance with the criteria set out in Annex I, as well as the yearly successful completion of the continuous professional training and development is proven by a certificate ***or any other document recognised by the Union or a Member State.';***

(ii) the following subparagraph is added:

'The Commission shall be empowered to amend this Directive by adopting delegated acts in accordance with Article 38 to review, where necessary, the requirements set out in Annex I.';

(c) paragraph 4 is replaced by the following:

'4. Insurance and reinsurance intermediaries shall hold professional indemnity insurance

covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR ***1 564 610*** applying to each claim and in aggregate EUR ***2 315 610*** per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.';

(d) in paragraph 6, point (b) is replaced by the following:

'(b) a requirement for the intermediary to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of EUR 18 750;';

(6) in Article 12(3) the following subparagraphs are added:

'The powers referred to in the first subparagraph, first sentence, shall include the power to:

(a) have access to any document or other data in any form which the competent authority considers could be relevant and necessary for the performance of its duties and receive or take a copy of that document or those data;

(b) require or demand the provision of information from any person and if necessary to summon and question a person to obtain information;

(ba) carry out regular checks of the alignment of the qualitative and quantitative features of the insurance-based investment products on the market with the relevant benchmarks and, when necessary, take corrective actions in accordance with Article 12a of this Directive;

(c) carry out on-site inspections or investigations;

(d) carry out mystery shopping activities;

(e) require the freezing or the sequestration of assets, or both;

(f) require the temporary prohibition of professional activity;

(g) require the auditors of insurance undertakings or insurance intermediaries to provide information;

(h) refer matters for criminal prosecution;

(i) allow auditors or experts to carry out verifications or investigations;

(j) suspend or prohibit for a maximum duration of 1 year marketing communications or practices used in their Member State, where there are reasonable grounds for believing that this Directive has been infringed.;

(k) require the temporary or permanent cessation of any practice or conduct that the competent authority considers to be contrary to the provisions adopted in the implementation of this Directive and prevent repetition of that practice or conduct;

(l) adopt any other type of measure to ensure that insurance undertakings and insurance intermediaries continue to comply with legal requirements;

(m) suspend or prohibit the distribution of an insurance-based investment product;

(n) suspend the distribution of an insurance-based investment product where the insurance undertaking or insurance distributor has failed to comply with Article 25;

(o) require the removal of a natural person from the management board of an insurance undertaking or insurance distributor;

(p) take all the necessary measures, including by requesting a third party or other public authority to implement such measures, whether on a temporary or permanent basis, to:

(i) remove content or to restrict access to an online interface or to order the explicit display of a warning to customers when they access an online interface;

(ii) order a hosting service provider to remove, disable or restrict access to an online interface;

(iii) order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it;

(q) impose the use of risk warnings for insurance-based investment products***, and, where applicable, underlying investment options,*** in information materials, including marketing communications, related to particularly risky insurance-based investment products and, where applicable, underlying investment ***options***, where those products and ***underlying investment options*** could pose a serious threat to investor protection.';

(qa) use webscraping techniques and tools to collect online data for monitoring, surveillance, detection and investigation purposes.

When making use of the powers referred to in point (j), the competent authority shall notify EIOPA. Where such practices or communications are used in more than one Member State, EIOPA shall, upon request of at least one competent authority, coordinate actions taken by competent authorities pursuant to point (j).

The implementation and the exercise of powers set out in this paragraph shall be proportionate and shall comply with Union and national law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted pursuant to this Directive shall be appropriate to the nature and the overall actual or potential harm of the infringement.';

(6a) the following article is inserted:

'Article 12-a

Benchmarks as a supervisory tool

1. In accordance with Article 25, EIOPA, on the basis of industry testing and after consulting ESMA and the national competent authorities, shall, where appropriate, develop common European benchmarks for groups of comparable insurance-based investment products manufactured and distributed in more than one Member State. The benchmarks shall represent reference points for comparable groups of insurance-based investment products and shall be used by national competent authorities to perform the assessment of the qualitative and quantitative features of insurance based-investment products distributed or manufactured by insurance undertakings and insurance intermediaries.

EIOPA shall regularly update those benchmarks, taking into account the developments on the market.

In specific cases, when national specificities exist which have a direct impact on the key features of a product, such as the costs, performance and qualitative benefits, these shall be taken into account. For this purpose, national competent authorities shall communicate these to EIOPA and shall provide guidance on how such features affect the benchmarks, including by providing a range of the impact that such features of the product have on the compliance with the benchmarks.

When the insurance-based investment product is manufactured and distributed in just one Member State, such product shall be subject to national benchmarks developed by the national competent authority of that Member State. EIOPA shall, after consulting ESMA, develop draft regulatory technical standards ***on the development of national benchmarks to ensure a harmonized approach within the Union, and shall periodically update those standards.***

EIOPA shall submit those draft regulatory technical standards to the Commission by ... [18 months after the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the fourth subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

2. The benchmarks referred to in paragraph 1 shall serve the sole purpose of a supervisory tool for national competent authorities in order to facilitate identification of potential outliers among insurance-based investment products on the market based on a risk-based approach and to allow them to conduct further inquiry when necessary.

For this purpose, national competent authorities may engage in cooperation with the private sector in order to support their efforts in market screening.

When using this power, national competent authorities shall regularly check the insurance-based investment products on the market and compare them to the relevant benchmarks. If they identify products that deviate from the benchmark, they may require the insurance undertaking or insurance intermediary to provide an explanation for that deviation and, if they consider that the explanation duly justifies the deviation, they shall conclude the inquiry with a positive assessment.

If however, they consider that the explanation does not justify the deviation from the benchmark, they may require the insurance undertaking or insurance intermediary to correct its approach and comply with the product oversight and governance requirements in Article 25 of this Directive to provide the consumer with the intended qualitative and quantitative features of the concerned product. If the undertaking or intermediary makes such correction, the national competent authorities shall conclude the inquiry with a positive assessment.

Where an insurance undertaking or insurance intermediary fails to provide an explanation or the explanation does not justify the deviation of the product from the benchmark and the

undertaking or intermediary fails to align the qualitative and quantitative features of the product with the relevant benchmark, the national competent authorities may require the insurance undertaking or insurance intermediary, as a measure of last resort, to remove that product from the market.';

(7) the following Articles 12a and 12b are inserted:

'Article 12 a

Cooperation and exchange of information with EIOPA

1. The competent authorities shall cooperate with EIOPA for the purposes of this Directive.
2. The competent authorities shall, without undue delay, provide EIOPA with all information EIOPA needs to carry out its duties under this Directive.

Article 12b

Collaboration platforms

1. EIOPA may, in the case of justified concerns about negative effects on policyholders, on its own initiative or at the request of one or more of the competent authorities, set up and coordinate a collaboration platform, to strengthen the exchange of information and to enhance collaboration between the relevant supervisory authorities where an insurance or reinsurance distributor carries out, or intends to carry out, insurance distribution activities which are based on the freedom to provide services or the freedom of establishment, ***or where an insurance manufacturer distributes, or intends to distribute products in another Member State using insurance distributors registered in the host Member State,*** and where such activities are of relevance with respect to the host Member State's market. If a collaboration platform is set up at the request of a competent authority, that competent authority shall notify the competent authority of the home Member State of its justified concerns about negative effects on investors.
2. Paragraph 1 shall be without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.
3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.

4. Without prejudice to Article 35 of Regulation (EU) No 1094/2010, at the request of EIOPA, the relevant competent authorities shall provide all necessary information in a timely manner.

5. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, EIOPA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1094/2010.

6. In the event of disagreement within the platform and where there are serious concerns about negative effects on policyholders or about the content of an action or inaction to be taken in relation to an insurance or reinsurance distributor, EIOPA may ***decide to initiate and coordinate joint on-site inspections. In that case, EIOPA shall invite*** the competent authority of the home Member State, ***as well as*** other ***relevant*** competent authorities ***of the collaboration platform, to participate in such*** joint on-site inspection .';

(8) Article 14 is replaced by the following:

'Article 14

Complaints

Member States shall ensure that insurance and reinsurance distributors establish appropriate procedures and arrangements, including electronic communication channels, to ensure that complaints from customers and other interested parties, especially consumer associations, are dealt with properly and that there are no restrictions on customers and other interested parties exercising their rights under this Directive. Those procedures and arrangements shall allow customers and other interested parties to register complaints and receive replies in the same language in which the communication material or any contractual documents were provided. In all cases, complainants shall receive replies within 40 working days.';

(9) the following Articles 16a and 16b are inserted:

'Article 16a

Financial education of customers

1. Member States shall ***define and implement information and educational actions***

in order to promote and increase customers' education ***and knowledge*** in relation to the responsible purchase of insurance products when accessing insurance services or ancillary services.

Member States shall consider the contribution of national competent authorities, universities and relevant stakeholders when designing the educational instruments to promote financial literacy. In that regard, Member States shall consider introducing compulsory teaching content in their national school curricula.

Member States may establish programmes to fund consumer organisations and independent investor or shareholder organisations that support the education of retail clients and potential retail clients in relation to responsible investment when accessing investment services or ancillary services.

1a. National competent authorities shall engage in a dialogue and carry out, at their own initiative, peer reviews to assess the applicability of best practices to their national system.

1b. The Commission, in collaboration with the ESAs, the European Investment Bank and the European Central Bank shall:

(a) facilitate cooperation and exchange of best practices among Member States and stakeholders active in education and finance;

(b) establish clear targets on financial literacy;

(c) establish a Platform on Financial education and literacy, which shall be composed of representatives of:

- the European Central Bank;

- the European Investment Bank;

- the ESAs;

- each Member State, in the education and finance sectors, designated by the national competent authorities;

- European and national consumer associations;

- European financial industry federations.

International organisations and other public and private stakeholders may be invited on an ad hoc basis.

The Platform shall be chaired by the Commission. Representatives shall be appointed for a two-year renewable mandate.

Member States shall promote and take measures for the development of financial literacy skills.

By ... [PO please insert the date = 12 months after the entry into force of this amending Directive] and every three years thereafter, Member States shall report to the Commission on the implementation of paragraph 1. The Commission shall issue guidelines regarding the scope of such reports.

By ... [PO please insert the date = 12 months after the entry into force of this amending Directive] and every five years thereafter, the Commission shall submit a report to the European Parliament and the Council on the implementation of measures in relation to paragraph 1, outlining the best practices, the possible way forward as well as the observed evolution and results between each report.

1c. Member States are encouraged to:

(a) coordinate and cooperate on matters related to financial education at Union level, such as through the use of the open methods of coordination and joint exchanges on best practices between the finance ministers of the Union and the education ministers of the Union, as well as with other Union institutions;

(b) promote financial education and training, also through lifelong learning opportunities at national level, as for example public-private partnerships, or through mentoring programmes.

The Commission and the Member States shall aim to strengthen cooperation in the field of financial education within the European Education Area, for example through the Erasmus+ Teacher Academies initiative. Member States are encouraged to use the existing tools and Union funding programmes at Union and national level in order to promote, support and enable financial education and training, and to ensure the mutual recognition of diplomas across the European Union.

1d. Member States shall consider the contributions of national competent authorities, universities and relevant stakeholders when designing the educational instruments to promote financial literacy.

Article 16b

Financial education of customers and marketing communication

Financial education material that aims to support individuals' financial literacy by enabling them to acquire financial competences, and that does not directly promote or entice investment in one or several insurance products, or categories thereof, or specific insurance services, shall not be deemed to constitute a marketing communication for the purposes of this Directive.';

(10) in Article 17, paragraph 2 is replaced by the following:

'2. Member States shall ensure that all information related to the subject of this Directive, including marketing communications, shall be fair, clear and not misleading.

Marketing communications shall be clearly identifiable as such and shall clearly identify the insurance undertaking or insurance distributor responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by that insurance undertaking or insurance distributor.';

(11) Article 18 is replaced by the following:

*'Article 18**General information to be provided to the customer**1. Member States shall ensure that in good time before the customer is bound by an insurance contract or offer, the following information about the insurance undertaking which is party to the proposed contract shall be communicated to the customer:*

(a) the name of the undertaking and its legal form;

(b) where the insurance contract is proposed under the right of establishment or the freedom to provide services, the Member State in which the head office of the insurance undertaking and, where appropriate, the branch proposing the contract is located;

(c) the address of the head office and, where appropriate, of the branch proposing the contract;

(d) information that the insurance undertaking is authorised pursuant to Article 14 of Directive 2009/138/EC, the national competent authority which granted the authorisation and the means for verifying the authorisation;

(e) a reference to the report on solvency and financial condition as laid down in Article 51 of Directive 2009/138/EC. allowing the customer easy access to this information.

2. Where the insurance contract is proposed by an insurance intermediary, that insurance intermediary shall, in good time before the customer is bound by the contract or offer, communicate the following additional information to the customer:

(a) the name of the insurance intermediary, its legal form and address and the fact that it is an insurance intermediary;

(b) where the insurance intermediary is acting under the right of establishment or the freedom to provide services, the Member State in which the head office of the insurance intermediary and, where appropriate, the branch proposing the contract is located;

(c) whether the insurance intermediary provides advice about the proposed insurance contract;

(d) the procedures referred to in Article 14 enabling customers and other interested parties to register complaints about insurance intermediaries and about the out-of-court complaint and redress procedures referred to in Article 15;

(e) the register in which the insurance intermediary has been included and the means for verifying that it has been registered;

(f) whether the insurance intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.

3. Where the insurance contract is proposed by an insurance undertaking, that insurance undertaking shall, in good time before the customer is bound by the contract or offer, communicate the following additional information to the customer:

(a) the name of the insurance undertaking, its legal form and address, and the fact that it is an insurance undertaking, insofar as this has not already been communicated in accordance with paragraph 1, point (a);

(b) whether it provides advice about the proposed insurance contract;

(c) the procedures referred to in Article 14 enabling customers and other interested parties to register complaints about insurance undertakings and about the out-of-court complaint and redress procedures referred to in Article 15;

(d) information that the insurance undertaking is authorised pursuant to Article 14 of Directive 2009/138/EC, the national competent authority which granted the authorisation and the means for verifying the authorisation, unless this has already been communicated in accordance with paragraph 1, point (d);

(e) whether the insurance undertaking is the manufacturer of the proposed contract or whether it is distributing the proposed contract on behalf of another insurance undertaking.';

(12) Article 19 is amended as follows:

(a) the title is replaced by the following:

'**Disclosures'**;

(b) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

'Member States shall ensure that in good time before the customer is bound by an insurance contract or offer, an insurance intermediary provides the customer with at least the following information:';

(ii) in point (c), the introductory wording is replaced by the following:

'in relation to insurance products other than insurance-based investment products, whether:';

(iii) point (d) is replaced by the following:

'(d) the nature of the remuneration received in relation to the insurance contract, in particular whether it works:

(i) on the basis of a fee, that is the remuneration paid directly by the customer;

(ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium;

(iii) on the basis of any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or

(iv) on the basis of a combination of any type of remuneration set out at points (i), (ii) and (iii).';

(iv) point (e) is deleted;

(c) paragraph 4 is replaced by the following:

'4. Member States shall ensure that in good time before the customer is bound by an insurance contract or offer, an insurance undertaking communicates to its customer the nature of the remuneration received by its employees in relation to the insurance contract.';

(13) Article 20 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘1. In good time before the customer is bound by an insurance contract or offer, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision.’;

(b) paragraphs 3, 4 and 5 are replaced by the following:

‘3. Where an insurance intermediary distributing insurance products other than insurance-based investment products informs the customer that it gives its advice on the basis of a fair and personal analysis, it shall give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer’s needs.

4. In good time before the customer is bound by an insurance contract or offer, whether or not advice is given and irrespective of whether the insurance product is part of a package pursuant to Article 24 of this Directive, the insurance distributor shall provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.

5. In relation to the distribution of non-life insurance products as listed in Annex I to Directive 2009/138/EC and to life insurance products as listed in Annex II to Directive 2009/138/EC other than insurance-based investment products, ***and other than life insurance products within the meaning of Article 2(1), point (17), (c) to (e),*** the information referred to in paragraph 4 of this Article shall be provided to retail customers by way of a standardised insurance product information document on paper or on another durable medium.’;

(c) paragraph 8 is amended as follows:

(i) the introductory wording is replaced by the following:

'For non-life insurance products, the insurance product information document shall contain the following information:’;

(ii) the following point (j) is added:

'(j) the law applicable to the contract where the parties do not have a choice of law or, where the parties can choose the law applicable to the contract, the law that the insurance undertaking proposes to choose, and the competent jurisdiction.';

(d) the following paragraph 8a is inserted:

'8a. For life insurance products other than insurance-based investment products ***and other than life insurance products within the meaning of Article 2(1), point (17), (c) to (e),*** the insurance product information document shall contain the following:

(a) information about the type of insurance;

(b) a summary of the insurance cover, including details of the insurance benefits and options and the circumstances that would trigger them, and, where applicable, a summary of the excluded risks;

(c) the means of payment of premiums and the duration of payments;

(d) information on the premiums for each benefit, both main benefits and supplementary benefits, where applicable;

(e) where applicable, the means of calculation and distribution of bonuses;

(f) main exclusions where claims cannot be made;

(g) obligations at the start of the contract;

(h) obligations during the term of the contract;

(i) obligations in the event that a claim is made;

(j) an indication of surrender and paid-up values and the extent to which they are guaranteed;

(k) information on the right of cancellation pursuant to Article 186 of Directive 2009/138/EC, in particular details on the time-limitations and conditions for the exercise of that right;

(l) general information on the tax rules applicable to the type of insurance policy;

(m) the term of the insurance contract, including the start and end dates of the contract;

(n) the means of terminating the contract;

(o) the law applicable to the contract where the parties do not have a choice of law or, where the parties can choose the law applicable to the contract, the law that the insurance undertaking proposes to choose, and the competent jurisdiction.';

(e) paragraph 9 is amended as follows:

(i) in the first subparagraph, 'paragraph 8' is replaced by 'paragraph 8a';

(ii) in the second subparagraph, '23 February 2017' is replaced by [DATE TBD IN ACCORDANCE TO DATE OF ADOPTION].';

(14) in Article 22(1), the first subparagraph is replaced by the following:

'The information referred to in Articles 18, 19 and 20 need not be provided when the insurance distributor carries out distribution activities in relation to the insurance of large risks or with customers meeting the criteria for professional clients as defined in Article 4(1), point (10), of Directive 2014/65/EU of the European Parliament and of the Council*.'

---

*Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).';

(15) Article 23 is replaced by the following:

'Article 23

Electronic distribution and other durable means

1. Insurance distributors shall provide all information required by this Directive to customers in electronic format.

By way of derogation from the first subparagraph, insurance distributors shall provide, upon request from the retail customer, the information referred to in the first subparagraph, free of charge on paper.

2. Insurance distributors shall inform retail customers that they have the option of receiving the information free of charge on paper.

3. Insurance distributors shall inform the existing retail customers that they have the choice either to continue receiving the information free of charge on paper or to receive the information only in electronic format. Insurance distributors shall inform existing retail customers that an automatic switch to the electronic format will occur after a period of at least eight weeks, if they do not request the continuation of the provision of the information on paper within that eight weak period. Existing retail customers who already receive the information referred to in paragraph 1 in electronic format do not need to be informed.

4. EIOPA shall, ***taking into account the requirements of other existing legislation,*** after consulting ESMA and after conducting consumer testing and industry testing, by [2 years after the entry into force of the amending Directive] develop, and update periodically, guidelines specifying the presentation of information provided in an electronic format in a suitable way for the average customer to whom the information is directed.

The guidelines referred to in the first subparagraph shall specify:

(a) the presentation and format of the digital disclosures, considering the various designs and channels that insurance distributors may use to inform their customers;

(b) the necessary safeguards to ensure ease of navigability and accessibility of the information, regardless of the device used by the customer;

(c) the necessary safeguards to ensure easy retrievability of the information and facilitate the storing of information by customers in a durable medium.';

(16) Article 25 is replaced by the following:

'Article 25

Product oversight and governance requirements

1. The home Member State of the manufacturer shall require that insurance undertakings and intermediaries which manufacture any insurance product for sale to customers, establish, maintain, operate and review a process for the approval of each insurance product and for significant adaptations of existing insurance products, before they are marketed or distributed to customers ('the product approval process').

   The product approval process shall be proportionate and appropriate to the nature of the insurance product. The product approval process shall contain all of the following:

   (a) a specification of an identified target market for each insurance product;

   (b) a clear identification of target market's objectives and needs;

   (c) an assessment of whether the insurance product is designed appropriately to meet the target market's objectives and needs;

   (d) an assessment of all relevant risks to the identified target market and that the intended distribution strategy is consistent with the identified target market;

   (e) reasonable steps to ensure that the insurance product is distributed to the identified target market;

   (f) in relation to insurance-based investment products, ***and which are made available to retail clients,*** a clear ***assessment and describtion of both quantitative and qualitative features of the financial insurance product, including:***

      i) all costs and charges related to the product

      ii) whether these costs and charges are justified***, in relation to those actually incurred for the design, management and distribution of the product,*** and proportionate ***(pricing process)***, having regard to the ***target market's objectives and needs, the product's*** characteristics, objectives, strategy and performance, as well as the guarantees and insurance coverage of biometric and other risks;

      iii) additional product features and services that may impact the value and benefits provided to investors. When an insurance product offers a range of underlying investment options, these requirements must also be carried out at the level of each investment option;

(g) in relation to insurance-based investment products, an assessment of the risk of misunderstanding of the main features, costs and risks of the insurance-based investment product by the customers belonging to the target market.

For the purposes of the second subparagraph, point (a), the manufacturer shall, as part of the target market definition, assess the type of customers to whom the product is targeted, the knowledge and experience level needed to understand the product, the ability to bear losses, the risk tolerance and whether the product allows the target market to:

(a) smoothly manage short-term finances to meet short-term needs;

(b) absorb economic shocks; or

(c) reach future long term goals.

The product approval process shall ensure that insurance undertakings and intermediaries take the clients' best interest into consideration in the manufacturing of the insurance products and take into account the intended monetary and non-monetary benefits to the customer.

Insurance undertakings and intermediaries shall regularly review the insurance products they manufacture, taking into account any event or risk that could materially affect the identified target market, to assess whether the insurance product remains consistent with the objectives, needs and characteristics of the target market.

1a. Insurance undertakings and intermediaries shall ensure that compliance reports to the management body systematically include information about the insurance product manufactured by the firm, including information on the distribution strategy and the intended monetary and non-monetary benefits to the clients related to the financial instruments. Insurance undertakings and intermediaries shall make the reports available to their competent authority upon request.

3. Insurance undertakings and intermediaries which manufacture insurance products, shall understand and regularly review the insurance products they offer, taking into account any event or risk that could materially affect the identified target market, and assess whether the product remains consistent with the objectives and needs of the identified target market and whether the intended distribution strategy remains appropriate.

   Insurance undertakings and intermediaries which manufacture insurance products, shall make available to distributors all information on the insurance product and the product approval process that is needed to fully understand that product and the elements taken into consideration during the product approval process, including complete and accurate details on any costs and charges***, features, objectives, strategy and performance*** of the insurance product.

   In the case of insurance-based investment products, the information made available to distributors shall contain all the elements referred to in paragraph 1, third subparagraph, points (f) and (g), any further relevant data and an explanation showing that costs and charges are justified and proportionate and that the product meets the objectives and needs of the customers belonging to the target market.

I

5. An insurance distributor that advises on or proposes insurance products which it does not manufacture, shall have in place adequate arrangements to obtain the information referred to in paragraph 3, second subparagraph, and to understand the characteristics and identified target market of each insurance product, ***including the monetary and non-monetary benefits relevant to the target market, but also to ensure that the insurance undertaking and intermediary takes into account the best interest of the target market..***

5a. Insurance intermediaries or insurance undertakings distributing insurance-based investment products shall:

   (a) make sure that they obtain and fully understand the information referred to in paragraph 3, third subparagraph;

   (b) identify and quantify any further costs and charges, in particular distribution costs, that are not already taken into account in the calculation of total costs and charges

by the manufacturer**,** ***including entry costs, exit costs and third-party payments received and retained by the distributor*****;**

(c) assess whether the total costs and charges ***incurred for the distribution of the product, including those associated with the advice provided to the client,*** are justified and proportionate, having regard to the target market's objectives and needs (pricing process).

(ca) assess additional product features and services that may impact the value and benefits provided to investors.

I

The distributor shall provide the insurance undertaking or insurance intermediary manufacturing the insurance-based investment product regularly with all relevant information about the results of its pricing process. Where the distributor finds that there are costs and charges, in particular distribution costs, that have not been fully taken into account in the manufacturer's pricing process, it shall immediately inform the manufacturer.

I

6a. Member States shall ensure that insurance undertakings and intermediaries manufacturing or distributing insurance-based investment product consider the following when complying with the product oversight and governance requirements:

(a) that the insurance-based investment product's costs and charges are compatible with the objectives, needs and characteristics of the target market;

(b) Where insurance undertakings and intermediaries manufacture or distribute insurance-based investment products falling under the definition of packaged retail investment products in Article 4, point (1), of Regulation (EU) No 1286/2014, they shall perform a peer grouping analysis in accordance with this paragraph. In their assessment, distributers may rely on the manufacturer's peer grouping analysis.

The manufacturer and distributor of an insurance-based investment product falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall perform a peer grouping evaluation of the insurance product.

Insurance undertakings and intermediaries which manufacture insurance-based investment products shall, in addition, perform a peer analysis of historical performance when performing product review of existing insurance products falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014.

Insurance undertakings and intermediaries which distribute insurance-based investment products shall, in addition, perform a peer-analysis of service costs based on an internal analysis of relevant peers in the market.

The peer grouping evaluation shall be performed on the basis of a peer group defined by the insurance undertakings and intermediaries. Insurance undertakings and intermediaries shall substantiate and document the choice and definition of the peer group. If the product falls under the definition of a UCITS in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council, or of an AIF in Article 4(1), point (a), of Directive 2011/61/EU of the European Parliament and of the Council, the peer group may be based on the relevant European fund classification system in accordance with Article 14(1f) of Directive 2009/65/EC of the European Parliament and of the Council or Article 12(1f) of Directive 2011/61/EU of the European Parliament and of the Council.

EIOPA shall by ... [12 months after the entry into force of this amending Directive], develop guidelines on the process and criteria used by investment firms to carry out their peer grouping evaluation, and shall periodically update those guidelines.

7. An insurance ***undertaking or insurance*** intermediary ▌which manufactures or distributes insurance-based investment products shall document all assessments made ***and shall, upon request, provide such assessments to a relevant competent authority***, including the ***the justification and demonstration of the proportionality of costs and charges of the insurance-based investment product*:**

In accordance with the information to be disclosed under Article 29 of this Directive, an insurance undertaking or intermediary which manufactures or distributes an insurance-based investment product falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, shall report to the competent authorities details of costs and charges of the insurance-based investment product destined for retail investors, including, where relevant, distribution costs

incorporated in the costs of the insurance-based investment product and costs related to the distribution of advice. The competent authorities shall transmit such data without undue delay to EIOPA.

EIOPA, after having consulted ESMA and the competent authorities and after industry testing, shall develop draft regulatory technical standards for the application of the requirements in this paragraph to determine the following:

(a) in accordance with the information to be disclosed under Article 29, the content and type of data to be reported to the home authorities, based on existing disclosure and reporting obligations;

(b) the formats, frequency and starting date for the information to be reported, in accordance with the information to be disclosed under Article 29.

EIOPA shall submit those draft regulatory technical standards to the Commission by [18 months after date of entry into force of this Directive].

Power is delegated to the Commission supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

7a. An insurance undertaking which manufactures and offers or recommends an insurance-based investment product may establish one pricing process relating to both manufacturing and distribution stages.

▌

9. ***EIOPA shall by ... [12 months after the entry into force of the amending Directive], develop guidelines to specify criteria to determine whether costs and charges are justified and proportionate, and it shall periodically update those guidelines.***

▌

11. The policies, processes and arrangements referred to in this Article shall be without prejudice to all other requirements under this Directive including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and third-party payments.

12. This Article shall not apply to insurance products which consist of the insurance of large risks.';

13. By ... [five years after the date of application of this amending Directive], Member States shall communicate to the Commission and ESMA all relevant information concerning the implementation of this Article. The Commission and ESMA may request additional information from national competent authorities.

On the basis of the information provided by Member States, the Commission, in consultation with ESMA and EIOPA, shall carry out an evaluation of the effective implementation of this Article and assess in particular:

(a) whether the effects of strengthened product governance requirements set out in this article have led to better value for money for citizens;

(b) the impact of the relevant provisions of this Directive on potential conflicts of interest associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection and the relevance of distribution rules;

(c) the implementation of financial literacy measures.

If the evaluation carried out by the Commission proves that the implementation of the new product governance requirements set out in this Article provides no positive change for consumers, the Commission shall accompany its report by a legislative proposal amending this Directive, if appropriate.';

(17) Article 26 is replaced by the following:

'Article 26

Scope of additional requirements

This Chapter establishes requirements additional to those applicable to insurance distribution, where the insurance distribution is carried out in relation to the sale of insurance-based investment products.

Insurance-based investment products may only be distributed by:

(a) an insurance intermediary;

(b) an insurance undertaking.';

(18) the following Article 26a is inserted:

'Article 26a

Marketing communications and practices

1. By derogation from Article 17(2), Member States shall ensure that marketing communications of insurance-based investment products are clearly identifiable as such and clearly identify the insurance intermediary or insurance undertaking responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by the insurance intermediary or insurance undertaking.

2. Member States shall ensure that marketing communications of insurance-based investment products are developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target audience and where related to a specific insurance-based investment product to the target market identified pursuant to Article 25(1).

   All marketing communications of insurance-based investment products shall present, in a prominent and concise way, the essential characteristics of the insurance-based investment products to which they refer.

   The information shall be made accessible, depending on the characteristics of the medium, via a nested display, scroll over, through a QR-code, or similar.

   The presentation of the essential characteristics of marketing communications of insurance-based investment products shall ensure that retail investors can easily understand the key features of the insurance-based investment product as well as the main risks associated with them.

3. Member States shall ensure that marketing practices are developed and used in a manner that is fair and not misleading, and shall be appropriate for the target audience. ***Member States shall ensure that insurance undertakings and insurance intermediaries, carrying out***

profiling of individuals for the purpose of this paragraph, fully comply with Regulation (EU) 2016/679.

4. Where a manufacturer of an insurance-based investment product prepares and provides a marketing communication to be used by a distributor, the manufacturer shall be responsible for the content of such marketing communication and its update. The distributor shall be responsible for the use of this marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified for ***the*** target market.

   Where an insurance undertaking or an insurance intermediary that offers or recommends insurance-based investment products which it does not manufacture, organises its own marketing communication, it shall be fully responsible for its appropriate content, update and use, in line with the identified target market.

4a. Where an insurance undertaking or insurance intermediary uses the services of a finfluencer, the insurance undertaking or insurance intermediary shall:

(a) establish a written agreement with the finfluencer determining the nature and scope of the activity to be carried out on behalf of the insurance undertaking or insurance intermediary;

(b) upon request, provide the identity and contact details of all finfluencers on whose services it relies to the competent authority;

(c) regularly verify whether the activity of the finfluencers whose services it relies on complies with paragraphs 1 to 4.

5. Member States shall ensure that insurance undertakings and insurance intermediaries make annual reports to their management body on the use of marketing communications and strategies aimed at marketing practices, the compliance with relevant obligations on marketing communications and practices under this Directive and on any signalled irregularities and proposed solutions.

6. Member States shall ensure that national competent authorities can take timely and effective action in relation to any marketing communication ***disseminated on their territory*** or marketing practice ***taking place on their territory*** that do not comply with the requirements laid down in paragraphs 1 to 3.

7. Member States shall ensure that insurance undertakings and insurance intermediaries keep records of all their marketing communications of insurance-based investment products ***provided or made accessible to retail customers or potential retail customers,*** or their marketing communications ***provided or made accessible to retail customers or potential retail customers that is*** made by any third party remunerated or incentivised through non-monetary compensation.

Such records shall be retained for at least the duration of the relationship between the insurance undertaking or insurance intermediary and the customer. Where the duration of the contract is more than seven years, only records of essential information shall be kept.

Those records shall be retrievable by the insurance undertaking or insurance distributor upon request by the competent authority.

The records referred to in the first subparagraph shall contain all of the following:

(a) the content of the marketing communication;

(b) details about the medium used for the marketing communication;

(c) the date and duration of the marketing communication, including relevant starting and end times;

(d) the targeted customer segments or profiling determinants;

(e) the Member States where the marketing communication was made available;

(f) the identity of any third party involved in the dissemination of the marketing communication.

Records of such identity referred to in point (f) shall contain the legal names, registered addresses, contact details and, where relevant, social media handle of the natural or legal persons involved.

8. The Commission shall be empowered to adopt a delegated act in accordance with Article 38 to supplement this Directive by specifying:

(a) the essential characteristics of insurance-based investment products to be disclosed in all marketing communications targeting retail customers or potential retail

customers and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by an average retail customer, regardless of the means of communication;

(b) the conditions with which marketing communications and marketing practices of insurance-based investment products should comply in order to be fair, clear, not misleading, balanced in terms of the presentation of the advantages***, costs*** and risks, and appropriate in terms of content and distribution channels for the target audience or, where applicable, the target market.';

(19) in Article 28, paragraph 2 is replaced by the following:

'Where organisational or administrative arrangements made by the insurance intermediary or insurance undertaking in accordance with Article 27 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature or sources of the conflicts of interest, in good time before the customer is bound by an insurance contract or offer.';

(20) Article 29 is replaced by the following:

'Article 29

Information to customers and policyholders

1. Without prejudice to Article 18 and Article 19(1) and (2), Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products provide customers ***or potential customers*** in good time before the customers are bound by an insurance contract or offer, with appropriate information in personalised form about the insurance-based investment products proposed to those customers. That information shall contain all of the following:

(a) where advice is provided;

(i) whether or not the advice is provided on an independent basis;

(ii) whether the advice is based on a broad or on a more restricted analysis of different types of insurance-based investment products and, where applicable, underlying investment ***options***, and in particular, whether or not the range is limited to products and assets manufactured or provided by entities having close links with the insurance intermediary or insurance undertaking, or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided;

(iii) whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment product recommended to that customer;

(iv) where the insurance intermediary or insurance undertaking provides independent advice to a retail customer, whether the range of insurance-based investment products that are recommended is restricted or not to well-diversified, non-complex (as referred to in Article 30(3)) and cost-efficient insurance-based investment products only;

▌

(b) a description of the main features of the proposed insurance-based investment product and, where applicable, any recommended underlying investment ***options*** and investment strategies, including appropriate guidance on, and warnings of, the risks associated with the insurance-based investment product and, where applicable, the recommended underlying investment ***options*** or in respect of particular investment strategies followed by that product;

(c) information on the proposed insurance cover, including details of the insurance benefits and options and the circumstances that would trigger them, and, where applicable, a summary of the excluded risks and exclusions, where claims cannot be made;

(d) information on all explicit and implicit costs, associated charges and third-party payments, including all costs and charges relating to the distribution of the

insurance-based investment product, and the cost of advice, where relevant, how the customer may pay for it and the duration of payments;

(e) the law applicable to the contract and the competent jurisdiction;

(f) general information on the tax rules applicable to the type of insurance-based investment product.

The information referred to in the first subparagraph, point (d), shall be accompanied by an appropriate explanation, in a standardised and comprehensible language for ***a*** retail customer, on the impact of the costs, charges and any third-party payments on the expected return.

Member States shall ensure that insurance intermediaries and insurance undertakings present the information on all costs, charges and third-party payments referred to in the first subparagraph, point (d) in aggregated form to enable the customer to understand the overall cost and the cumulative effect on the return of the investment. The overall cost shall be expressed in monetary terms and percentages calculated over the term of the insurance-based investment product. ***I***nsurance intermediaries and insurance undertakings shall ***inform clients explicitly of their right to request*** an itemised breakdown of that information ***and they shall provide such an itemised breakdown at the request of the client***.

If the disclosure of third-party payments cannot be ascertained at the pre-contractual stage, the method for calculating the amount shall be clearly disclosed to the client in a manner that is comprehensible and accurate for a retail client._Insurance intermediaries and insurance undertakings shall also provide their clients with information on the exact amount of the third-party payments received or paid on an ex-post basis.

The third-party payments paid or received by the insurance intermediary or insurance undertaking in connection with the provision or distribution of the insurance-based investment product shall be itemised separately. The insurance intermediary or insurance undertaking shall disclose the cumulative impact of such third-party payments, including any recurring third-party payments, on the net return over the term of the insurance-based investment product. The purpose of the third-party payments and their impact on the net return shall be explained in a standardised way and in a comprehensible language for an average

retail customer.

2. Member States shall ensure that manufacturers of insurance-based investment products draw up a concise personalised document containing key information to be provided annually to each retail customer holding the product ('annual statement').

   The exact date to which the information in the annual statement refers shall be stated prominently.

   The information in the annual statement shall be accurate and up to date.

   Manufacturers shall make the annual statement available to each retail policyholder free of charge through electronic format. A paper copy shall be provided upon request in addition to any information available through electronic means.

   The annual statement does not need to be provided where the manufacturer provides its retail policyholders with access to an online system, which qualifies as a durable medium, where up-to-date statements with the relevant information set out in paragraph 3 can be easily accessed and the manufacturer has evidence that the retail policyholder has accessed those statements at least once during the previous 12 months.

3. The annual statement shall include, at least, the following key information:

   (a) the total costs associated charges and third-party payments, expressed in an itemised way in monetary terms and percentages, paid or borne, directly or indirectly, by the retail policyholder over the previous 12 months and on a compounded basis since the start of the contract term in connection with the insurance-based investment product;

   (b) the annual performance of each of the underlying investment ***options*** of the insurance-based investment product and the annual global performance of the portfolio, each compared with past performance over previous years:

   (c) the total taxes including stamp duty, transactions tax, withholding tax and any other taxes where levied by the insurance undertaking, with a split per tax, borne by the retail customer in connection with the insurance-based investment product;

(d) where applicable, the market or estimated value when the market value is not available of the underlying investment ***options*** of the insurance-based investment product;

(e) payments made by the retail policyholder with regard to the insurance-based investment product including investments, deposits, contributions, premiums and fees, over the previous 12 months, deducting any withdrawals made;

(f) ▌ projections of the expected outcome at the end of the contractual or recommended holding period, based on the current value of the investment and its performance development so far and linked to the pre-contractual performance scenarios in the key information document provided for in Regulation No 1286/2014, and a disclaimer that those projections may differ from the actual final value of the investment;

(g) information on the conditions and financial consequences of an early termination of the investment or switching of providers, including the surrender value and conditions for surrendering the insurance policy;

(h) a short summary on the insurance cover, in particular the insurance benefits and any options and information on what happens when the insured person dies or another insured event occurs;

(i) in the case of insurance-based investment products for which the policy terms and conditions provide for periodic premium reviews, the projected premiums required to maintain existing protection benefits until the ages of 55, 65, 75 and 85.

Without prejudice to the requirements in this paragraph, where sufficient information is not available on a specific product to draw up an annual statement, the requirements with respect to the annual statement shall only be applicable contracts concluded after the entry into force of Directive .../... [insert the number of this amending Directive].

4. The information described in paragraph 1 and the annual statement referred to in paragraphs 2 and 3 shall be provided to retail customers and policyholders by using a Union standardised terminology and format.***_Without prejudice to the manufacturer providing its retail policyholders with access to an online system in accordance with Article 29(2), fifth subparagraph, layering of the information required under paragraphs 1, 2 and 3 of this***

Article, whereby detailed parts of the information can be presented through pop-ups or through links to accompanying layers, shall be permitted where the annual statement is provided in an electronic format. In that case, it shall be possible to print the annual statement as one single document.

EIOPA shall, after having consulted ESMA and after conducting consumer testing and industry testing, develop draft regulatory technical standards to specify ***the following***:

(a) the relevant format for the provision of the information listed in paragraphs 1 and 3, including the form and the length of the document, and the content of each of the elements of information;

(b) the ▌standard▌ terminology and ***brief and concise*** related explanations to be used ***by insurance undertakings and insurance intermediaries*** for the ***disclosure*** of the information listed in paragraphs 1 and 3. The explanations shall ensure that they are likely to be understood by any retail customer without specific knowledge on insurance-based investment products;

EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is ***delegated to*** the Commission to supplement this Directive by adopting the regulatory technical standards ▌ in accordance with Article 10 of Regulation (EU) No 1094/2010.

5. Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products display appropriate warnings in information material, including marketing communications, provided to retail customers to alert them on the specific risks of potential losses carried by particularly risky ***or complex*** insurance-based investment products and, where applicable, underlying investment ***options***.

EIOPA shall, by [18 months after the entry into force of the amending Directive], develop, and update periodically, guidelines on the concept of particularly risky ***or complex*** insurance-based investment products, taking due account of the specificities of the different types of insurance-based investment products.

EIOPA shall develop regulatory technical standards to further specify the format and content of such risk warnings, taking due account of the specificities of the different types of insurance-based investment products and types of communications***, including the***

specificities of multi-option products (MOPs).

EIOPA shall submit those regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third subparagraph in accordance with Article 10 of Regulation (EU) No 1094/2010.

National competent authorities shall monitor the ▌ application of risk warnings ▌ . In case of concerns regarding the use, or absence of use ▌ of such risk warnings▌ , that may have a material impact on the investor protection, ▌ competent authorities ▌ may impose the use of risk warnings by insurance intermediaries and insurance undertakings distributing insurance-based investment products.';

(21) the following Articles 29a and 29b are inserted:

'Article 29a

Inducements

▌

2. Member States shall ensure that insurance ***undertakings or insurance*** intermediaries, when distributing insurance-based investment products in accordance with Article 30(1), only receive or pay fees or benefits from or to a third-party on the condition that those insurance intermediaries or insurance undertakings ensure that the reception or payment of such fees or benefits does not impair compliance with their duty to act honestly, fairly and professionally in accordance with the best interests of their customers. Insurance intermediaries and insurance undertakings shall disclose the existence, nature and amount of such third-party payments in accordance with Article 29.

3. Member States shall ensure that insurance intermediaries and insurance undertakings shall, where applicable, inform the customer on mechanisms for transferring to the customer any fee, commission, monetary or non-monetary benefit received in relation to the distribution of the insurance-based product.

4. Member States may impose stricter requirements on insurance intermediaries and insurance undertakings in respect of the matters covered by this Article. In particular, Member States

may ▌prohibit or ▌restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice.

Stricter requirements may include requiring any such fees, commissions or non-monetary benefits to be returned to the customers or offset against fees paid by the customer.

The stricter requirements of a Member State referred to in this paragraph shall be complied with by all insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.

4a. Member States shall require that, where an insurance intermediary or insurance undertaking distributing insurance-based investment products informs the customer that advice is given on an independent basis, the insurance intermediary or insurance undertaking:

(a) assesses a sufficiently large number of insurance products available on the market which are sufficiently diversified with regard to their type and product providers to ensure that the customer's objectives can be suitably met and are not limited to insurance products issued or provided by entities having close links with the insurance intermediary or insurance undertaking;

(b) does not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to customers.

This paragraph shall not prevent insurance intermediaries whose legal status qualifies them as independent, from presenting themselves as not contractually tied to a specific insurance undertaking if they indicate that they receive inducements.

5. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify:

(a) how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article;

(b) the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.

Article 29b

Best interest of customers

1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to consumers, an insurance undertaking or an insurance intermediary acts honestly, fairly and professionally in accordance with the best interests of its consumers and complies, in particular, with the obligations set out in this Article and Article 17.

1***a***. Member States shall ensure that in order to act in the best interest of the customer, when providing ***investment*** advice to customers on insurance-based investment products, insurance undertakings and insurance intermediaries are ***obliged***:

(a) ***to inform the customer of the range of insurance-based investment products or, where applicable, underlying investment options assessed by the insurance undertaking or insurance intermediary, and*** to provide such advice on the basis of an assessment of an appropriate range of insurance-based investment products ***or***, where applicable, underlying investment ***options, suited to the customer's needs. The range of insurance-based investment products shall reflect the business model of the insurance undertaking or insurance intermediary.***

Where insurance undertakings and insurance intermediaries are tied by exclusive partnerships, they may build the appropriate range of insurance-based investment products among products or, where applicable, underlying investment options offered by only one insurance undertaking. In that case, customers shall be informed thereof in accordance with the applicable requirements, in particular Article 29(1), point (a) (ii).;

(b) to recommend the most efficient insurance-based investment product ***or***, where applicable, underlying investment ***options*** among the insurance-based investment products identified as suitable for the customer pursuant to Article 30(1) and

offering similar features, ***taking into consideration its performance, level of risk, costs and charges reported pursuant to Article 25(1c) and, if an equivalent product with higher costs is recommended, to justify this on objective grounds and keep records of that justification***;

(c) ▌

(ca) not to place the financial or other interest of the insurance undertaking or insurance intermediary ahead of the interests of the client;

(d) to recommend an insurance-based investment products which insurance cover is consistent with the customer's insurance demands and needs.

1b. Where insurance undertakings and insurance intermediaries are subject to an inducement ban, the conditions of this Article shall be presumed to be fulfilled. The national competent authority may reverse that presumption if an insurance undertaking or insurance intermediary does not comply with the provisions of this Article.

1c. EIOPA may organise and conduct a mandatory peer review in cooperation with national competent authorities regarding the implementation of the obligations laid down in this Article.

2. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article.

Those delegated acts shall take into account the nature of the services offered or provided to the customer, the nature of the products, ***and where applicable, underlying investment options,*** being offered or considered, including different types of insurance-based investment products, ***or where applicable, underlying investment options***.';

(22) Article 30 is amended as follows:

(a) the following paragraph -1 is inserted:

'-1. Member States shall require that insurance intermediaries and insurance undertakings distributing insurance-based investment products assess the suitability or appropriateness of insurance-based investment products and, where applicable, underlying investment ***options***

to be recommended to or demanded by customers in good time before the customers are bound by an insurance contract or offer. Each of these assessments shall be carried out on the basis of proportionate and necessary information about the customer as obtained by the insurance intermediary or insurance undertaking in accordance with the requirements set out in this Article.

Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products explain to customers the purpose of the suitability or appropriateness assessment before any information is requested from them. Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products warn customers, in a standardised format, of all of the following:

(a) that the provision of inaccurate or incomplete information may impact negatively the quality of the assessment to be made by the insurance intermediary or insurance undertaking

(b) that the absence of information prevents the insurance intermediaries and insurance undertakings distributing insurance-based investment products from determining whether the service or financial instrument envisaged is suitable or appropriate for the customer and from providing advice.

Member States shall ensure that insurance intermediaries and insurance undertakings distributing insurance-based investment products provide customers, upon their request, with a report on the information collected for the suitability or appropriateness assessment. That report shall be presented in a standardised format, as developed by EIOPA.

EIOPA shall develop draft regulatory technical standards to determine the explanation and warning referred to in the second subparagraph and the format and content of the report referred to in the third subparagraph.

EIOPA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Article 10 of Regulation (EU) No 1094/2010.';

(b) paragraphs 1, 2 and 3 are replaced by the following:

‘1. Without prejudice to Article 20(1), when providing advice on insurance-based investment products, the insurance intermediary or insurance undertaking shall obtain the information regarding:

- the customer’s knowledge and experience in the investment field relevant to the specific type of insurance-based investment product or, where applicable, underlying investment ***options***, offered or demanded, ***and the client’s*** financial situation,

- its ability to bear full or partial losses,

- investment needs and objectives, including any sustainability preferences, and risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer the insurance-based investment products that are suitable for that person and that, in particular, ▌risk tolerance, ability to bear losses***, its sustainability preferences*** and ***the*** need for ▌diversification.

▌

When providing advice that involves switching between underlying investment ***options***, insurance intermediaries and insurance undertakings shall obtain the necessary information on the customer’s existing underlying investment ***options*** and the recommended new investment ***options*** and shall analyse the expected costs and benefits of the switch, so that they are reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs.

2. Without prejudice to Article 20(1), Member States shall ensure that, where ***an insurance-based investment product is sold without advice***, the insurance intermediary or insurance undertaking shall ask the customer to provide information regarding that person’s knowledge and experience in the investment field relevant to the specific type of insurance-based investment product or, where applicable, underlying investment assets, offered or demanded ▌so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance-based investment product or products envisaged are appropriate for the customer.

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received under the first subparagraph, that the product is not appropriate for the customer, the insurance intermediary or insurance undertaking shall

warn the customer. That warning shall be provided in a standardised format and shall be recorded.

The insurance intermediary or insurance undertaking shall not proceed with the distribution of an insurance-based investment product subject to a warning indicating that the product of service is not appropriate, unless the customer asks to proceed with it despite such warning and the insurance undertaking accepts to conclude the contract at the demand of the customer. Both the demand of the customer and the acceptance by the insurance undertaking shall be recorded.

EIOPA shall develop draft regulatory technical standards to determine the format and content of the warning referred to in the second subparagraph.

EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is conferred on the Commission to adopt those regulatory technical standards in accordance with 10 of Regulation (EU) No 1094/2010.

3. Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States may derogate from the obligations referred to in paragraph 2 of this Article, allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities in relation to insurance-based investment products within their territories without the need to obtain the information or make the determination provided for in paragraph 2 of this Article where all of the following conditions are met:

(a) the insurance distribution activities relate to either of the following:

(i) insurance-based investment products which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved;

(ii) other non-complex insurance-based investment products for the purpose of this paragraph;

(b) the insurance distribution activity is carried out at the initiative of the customer;

(c) the customer has been clearly informed that, in the provision of the insurance distribution activity, the insurance intermediary or the insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered and that the customer does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning shall be provided in a standardised format.

(d) the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28.

All insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when distributing insurance-based investment products to customers having their habitual residence or establishment in a Member State which does not make use of the derogation referred to in this paragraph shall comply with the applicable provisions in that Member State.

EIOPA shall develop draft regulatory technical standards to determine the format and content of warning referred to in the first subparagraph, point (c).

EIOPA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].

Power is conferred on the Commission to adopt those regulatory technical standards in accordance with 10 of Regulation (EU) No 1094/201039.';

(c) paragraph 5 is replaced by the following:

'5. Member States shall ensure that insurance intermediaries or insurance undertakings provide the customer with adequate reports on the insurance distribution activities on a durable medium. Those reports shall contain periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall contain, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

Member States shall ensure that insurance intermediaries or insurance undertakings, when providing advice on insurance-based investment products, provide the customer sufficiently before the conclusion of the contract and on a durable medium, with a suitability statement specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer. The provision of such statement shall be made sufficiently in advance before the customer is bound by an insurance contract or offer to ensure that the customer gets enough time to review it, and where necessary, obtain additional information or clarifications from the insurance intermediary or insurance undertaking.

Member States shall ensure that where the insurance contract is concluded by means of distance communication which prevents the prior delivery of the suitability statement, the insurance intermediary or the insurance undertaking may provide the suitability statement on a durable medium immediately after the customer is bound by an insurance contract, provided that both of the following conditions are met:

(a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract;

(b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract to receive the suitability statement in advance of such conclusion.

Member States shall ensure that where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the retail customer.';

(d) the following ***paragraph is*** inserted:

'5a. Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may make the provision of advice referred to in Article 30 mandatory for the sales of any insurance-based investment products, or for certain types of them.

Member States shall ensure that their stricter requirements referred to in the first subparagraph are complied with by all insurance intermediaries or insurance undertakings,

including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.';

▌

▌

(e) paragraph 6 is replaced by the following:

'6. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article when carrying out insurance distribution activities in relation to insurance-based investment products, including with regard to:

(a) the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers;

(b) the criteria to assess non-complex insurance-based investment products for the purposes of paragraph 3, point (a)(ii), of this Article;

(c) the content and format of records and agreements for the provision of services to customers and of periodic reports to customers on the services provided.

(ca) the criteria for assessing the alignment of financial products with a client's sustainability preferences and outlining the procedures for tailoring a portfolio or investment product offering to align with a client's sustainability preferences.

Those delegated acts shall take into account the nature of the services offered or provided to the customer, the nature of the products being offered or considered, including different types of insurance-based investment products and the retail or professional nature of the customer.';

(23) Article 35(2) is amended as follows:

(a) point (a) is replaced by the following:

'(a) specific procedures for the receipt of reports on potential or actual infringements and

their follow-up, including the establishment of secure communication channels for such reports;';

(b) the following subparagraph is added:

'The specific procedures referred to in point (a) shall also include the creation, on the front page of each competent authority's website, of a link to a simple reporting form allowing any person to report potential or actual infringements to Union law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via that reporting form.';

(24) the following Article 35a is inserted:

'Article 35a

Procedure to address activities offered through digital means without authorisation or registration

1. Member States shall ensure that where a natural or legal person is pursuing insurance distribution activities online targeting customers within its territory without being registered in accordance with Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC, or where a competent authority to suspect that that entity pursues such activities without being registered in accordance with Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC, the competent authority takes all appropriate and proportionate measures to prevent the pursuit of these distribution activities, including related marketing communication, by resorting to the supervisory powers referred to in Article 12(3). Any such measures shall respect the principles of cooperation between Member States set out in this Directive.

The first subparagraph shall also apply to any finfluencer that is remunerated or incentivised through non-monetary compensation by an insurance undertaking or insurance intermediary without being registered in accordance with Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC, where such finfluencer promotes through public social media platforms services or insurance-based investment products or underlying investment options on behalf of such an insurance undertaking or insurance intermediary.

2. Member States shall provide that competent authorities publish any decision imposing a measure pursuant to paragraph 1 in compliance with Article 32.

Competent authorities shall inform EIOPA of any decision referred to in paragraph 2 without undue delay. EIOPA shall establish an electronic database containing the decisions submitted by competent authorities, which shall be accessible to all competent authorities. EIOPA shall publish a list of all existing decisions, describing the natural or legal persons concerned and the types of services or products provided. The list shall be accessible to the public through a link on EIOPA's website. As regards natural persons, this list shall not lead to the publication of more personal data of those natural persons than that published by the competent authority pursuant to the first subparagraph, and in accordance with Article 32.';

(25) Article 38 is replaced by the following:

'Article 38

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 39 concerning Articles 10, 25, 26a, 28, 29a, 29b and 30.';

(26) Article 39 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. The power to adopt delegated acts referred to in Articles 10, 25, 26a, 28, 29a, 29b and 30 shall be conferred on the Commission for an indeterminate period of time from 22 February 2016.

3. The delegation of power referred to in Articles 10, 25, 26a, 28, 29a, 29b and 30 may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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.';

(b) the following paragraph 3a is inserted:

‘3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Articles 10, 25, 26a, 28, 29a, 29b and 30 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to 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 three months at the initiative of the European Parliament or of the Council.’;

(24) Annex I is amended in accordance with Annex III to this Directive.

Article 3

Amendments to Directive 2009/138/EC

Section 5 of Title II, Chapter 1, of Directive (EU) 2009/138 is amended as follows:

(1) the heading is replaced by the following:

‘Section 5

Cancelation right’;

(2) the following text is deleted:

‘Subsection 1

Non-life insurance’;

(3) Articles 183 and 184 are deleted;

(4) the following text is deleted:

‘Subsection 1

Life insurance’;

(5) Article 185 is deleted.

Article 4

Amendments to Directive 2009/65/EC

Directive 2009/65/EC is amended as follows:

(1) Article 14 is amended as follows:

(a) the following paragraphs 1a to 1f are inserted:

'1a. For the purpose of paragraph 1, Member States shall require management companies to act in such a way as to prevent undue costs from being charged to the UCITS and its unit-holders.

The costs which comply with the following conditions shall be regarded as due:

(a) The costs ***do not exceed the maximum amount disclosed*** in the prospectus referred to in Article 69 and the key investor information referred to in Article 78;

(b) The costs are ***properly incurred in connection with or for the purposes of:***

i) ***the operation of*** the UCITS ***having regard*** to ▌its ***structure,*** investment strategy***,*** ▌objective ***and policy,*** or

ii) ***the compliance with legal*** regulatory requirements;

(c) The costs are borne by investors in a way that ensures fair treatment of investors.

1b. Member States shall require management companies to maintain, operate and review an effective pricing process that allows for the identification and quantification of all costs borne by the UCITS or its unit-holders. Before the authorisation of the UCITS and throughout its life, that pricing process shall ensure that the following conditions are fulfilled:

(a) the costs are not undue;

(b) the costs borne by retail investors are justified and proportionate, ***in the context of the overall value delivered to unit -holders*** having regard to the characteristics of the UCITS, including its investment objective, ***policy,*** strategy, expected returns, level of risks and other relevant characteristics.

1c. Member States shall ensure that management companies are responsible for the effectiveness and quality of their pricing process. The pricing process shall be clearly documented, shall clearly set out the responsibilities of the management bodies of the management company in determining and reviewing the costs borne by investors, and shall be subject to periodic review. The assessment of costs shall be based on objective criteria and methodology, ***and shall include*** a comparison to market ***products, such as UCITS with similar characteristics in terms of investment objective, strategy, level of risks and other relevant characteristics.***

1d. Member States shall require management companies to assess ▌annually whether undue costs have been charged to the UCITS or its unit-holders.

Member States shall require management companies to reimburse investors, ***without undue delay,*** where undue costs have been charged to the UCITS or its unit-holders, ***or where costs have been miscalculated to the detriment of the UCITS or its unit-holders***.

Member States shall require management companies to report to the competent authorities of their home Member State and to the competent authorities of the home Member State of the UCITS, to the depositary and to the financial auditors of the UCITS, situations where undue costs have been charged to the UCITS or its unit-holders.

1e. Member States shall require management companies to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the pricing process▌.

▌

1f. ESMA shall, no later than four years after the entry into force of Directive (EU) .../... [OP Please introduce the number of this amending Directive], organise and conduct a peer review in cooperation with national competent authorities, regarding the implementation of the obligations described in this Article, including the costs associated with reimbursements to individual investors.";

(b) paragraph 2 is amended as follows:

(i) The introductory wording is replaced by the following:

‘Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures to ensure that the management company complies with the duties set out in paragraphs 1 to 1e in particular to:’;

(ii) point (b) is replaced by the following:

‘(b) specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities;’;(iii) the following points (d) and (e) are added:

‘(d) specify the minimum requirements for the pricing process to prevent undue costs from being charged to the UCITS and its unit-holders, in particular, by:

(i) ensuring that costs are correctly identified and quantified, and comply with the requirements set out in paragraph 1a, point (a);

(ii) identifying which costs can be charged to the UCITS and its unit-holders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c) , and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);

(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;

(iv) establishing a procedure to determine the level of compensation where undue costs have been charged to investors;

(v) establishing a procedure which will be triggered when the amount unduly charged is material and exceeds a threshold to be determined on the basis of existing national competent authorities’ guidelines on indemnification procedures;

(e) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b).’;

(c) the following paragraph 4 is added:

‘4. By …[OP: please insert the date = five years from the date referred to in Article 7(2) of

this Directive], after consulting ESMA, the Commission shall submit a report to Council and Parliament on the implementation of this Article. The report shall evaluate at least the following:

(a) whether this Article has had a positive impact on the costs and performance of UCITS offered to retail investors and to which extent;

(b) whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by management companies;

(ba) whether there could be other mechanisms to address high costs incurred by investors at Union level, including legislative and non-legislative measures.';

(2) the following Article 20a is inserted:

'**Article 20a**

In respect of each UCITS it manages, a management company shall provide to the competent authority of its home Member State information on the costs borne by investors and performance of the UCITS, at the level of each fund, or at the level of the UCITS share classes where those share classes have different cost structures.';

(3) in Article 30, the second paragraph is replaced by the following:

'For the purpose of the Articles referred to in the first paragraph, 'management company' means 'investment company', with the exception of the second paragraph of Article 14(1d).'

(4) in Article 90, the following paragraph is added:

'This Article applies without prejudice to the application of Article 14.';

(5) ▌Article 98(2) ***is amended as follows:***

(i) the following point ***is inserted***:

'(ea) in accordance with Article 69a of Directive 2014/65/EU, carry out regular checks of the alignment of the qualitative and quantitative features of the UCITS on the market with the relevant benchmarks and, when necessary, take corrective actions;';

(ii) the following point is added:

‘(n) ***without prejudice to any reimbursement made pursuant to Article 14(1d),*** require compensation to investors where undue costs have been charged to UCITS or its unit-holders.’;

(6) in Article 99(6), the following point is added:

‘(h) ***without prejudice to any reimbursement made pursuant to Article 14(1d), a*** requirement to compensate investors where undue costs have been charged to UCITS or its unit-holders***, or where costs have been miscalculated to the detriment of the UCITS or its unit-holders, while taking into account that procedures for compensation are to be proportionate to the unduly charged amount, in particular from a technical and operational standpoint***.’;

(7) in Article 112a(2), the following subparagraph is inserted after the fourth subparagraph:

‘The power to adopt the delegated acts referred to in Article 14 shall be conferred on the Commission for a period of four years from [OJ: insert date of entry into force of this amending Directive].’;

Article 5

Amendments to Directive 2011/61/EU

Directive 2011/61/EU is amended as follows:

(1) Article 12 is amended as follows:

(a) the following paragraphs 1a to 1f are inserted:

“1a. For the purposes of paragraph 1, Member States shall require AIFMs to act in such a way as to prevent undue costs from being charged to the AIFs and their unitholders.

The costs which comply with the following conditions shall be regarded as due:

(a) ***they do not exceed the maximum amount disclosed*** in the prospectus referred to in Article 23(3), the fund rules or instruments of incorporation as referred to in Article 23(1) and the key information document referred to in Article 5(1) of Regulation (EU) No 1286/2014;

(b) ***they*** are ***properly incurred in connection with or for the purposes of:***

i) the operation of the AIF ***having regard*** to ▌its ***structure,*** investment strategy,

▌ objective ***and policy,*** or

ii) the compliance with legal or regulatory requirements;

(c) ***they*** are borne by investors in a way that ensures fair treatment of investors, except for cases mentioned in Article 12 (1) where AIF rules or instruments of incorporation provide for a preferential treatment.

1b. Member States shall require AIFMs to maintain, operate and review an effective pricing process that allows for the identification and quantification of all costs borne by the AIFs or their unitholders. That pricing process shall ensure that the following conditions are fulfilled:

(a) the costs are not undue;

(b) the costs borne by retail investors are justified and proportionate, ***in the context of the overall value delivered to unit-holders and*** having regard to the characteristics of the AIF, including its investment objective, ***policy,*** strategy, expected returns, level of risks and other relevant characteristics.

1c. Member States shall ensure that AIFMs are responsible for the effectiveness and quality of their pricing process. The pricing process shall be clearly documented, shall clearly set out the responsibilities of the management bodies of the AIFM in determining and reviewing the costs borne by investors, and shall be subject to periodic review. The assessment of costs shall be based on objective criteria and methodology, ***and shall include*** a comparison to market ***products, such as AIFs with similar characteristics in terms of investment objective, strategy, level of risks and other relevant characteristics.***

1d. Member States shall require AIFMs to assess ▌ annually whether undue costs have been charged to AIF or its unit holders.

Member States shall require AIFMs to reimburse investors ***without undue delay,*** where undue costs have been charged to the or its AIF unit-holders, ***or where costs have been miscalculated to the detriment of the AIF or its unit-holders***.

Member States shall require AIFMs to report to the competent authorities, of their home Member State, to the competent authority of the home Member State of the AIF, where applicable, to the depositary and to the financial auditors of the AIFMs and the AIF, where applicable, situations where undue costs have been charged to the AIF or its unit-holders.

1e. Member States shall require AIFMs to assess at least annually the conditions mentioned in paragraph 1b, point (b). The assessment shall take into account the criteria set out in the pricing process .

1f. ESMA shall organise and conduct a peer review, no later than four years after the entry into force of Directive (EU) [OP Please introduce the number of this amending Directive], in cooperation with national competent authorities regarding the implementation of the obligations described in this Article.”;

(b) paragraph 3 is replaced by the following:

‘3. The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the criteria to be used by the relevant competent authorities to assess whether AIFMs comply with their obligations under paragraph 1 of this Article and measures to ensure that the AIFM complies with the duties set out in paragraphs 1 to 1e of this Article, in particular to:

(a) specify the minimum requirements for the pricing process to prevent undue costs from being charged to the AIF and its unit-holders, in particular, by:

(i) ensuring that costs are correctly identified and quantified, and comply with the condition set out in paragraph 1a, point (a);

(ii) identifying which costs can be charged to the AIF and its unit-holders taking into account the level of the costs and the nature of the costs by reference to a list of eligible costs that meet the conditions set out in paragraph 1a, points (b) and (c), and the conditions under which competent authorities may authorise on a case-by-case basis costs which are not included in the list of eligible costs but that meet the conditions set out in paragraph 1a, points (b) and (c);

(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest;

(iv) establishing a procedure to determine the level of compensation in case

undue costs have been charged to investors; ***establishing a procedure which will be triggered when the amount unduly charged is material and exceeds a threshold to be determined on the basis of existing guidelines from national competent authorities on indemnification procedures***.

(b) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b)▌.';

(c) the following paragraph 4 is added:

'4. By …[OP: please insert the date = five years from the date referred to in Article 7(2) of this Directive] after consulting ESMA, the Commission shall submit a report to Council and Parliament on the implementation of this Article. The report shall evaluate at least the following:

(a) whether this Article has had a positive impact on the costs and performance of AIF offered to retail investors and to which extent;

(b) whether the assessment set out in paragraph 1e is proportionate in terms of complexity and costs incurred by AIFMs.';

(ba) whether there could be other mechanisms to address high costs incurred by investors at Union level, including legislative and non-legislative measures.';

(2) in Article 24(2), the following point (f) is added:

'(f) information on the costs borne by investors and performance of the AIF, at the level of each AIF or at the level the AIF's share classes where those share classes have different cost structures.';

(3) in Article 46(2), the following point***s are*** added:

'(ea) in accordance with Articles 69a of the Directive 2014/65/EU, carry out regular checks of the alignment of the qualitative and quantitative features of the UCITS on the market with the relevant benchmarks and, when necessary, take corrective actions;

(n) ***without prejudice to any reimbursement made pursuant to Article 12(1d),*** require that investors ***be compensated*** where undue costs have been charged to ***AIF or its unit-holders, or where costs have been miscalculated to the detriment of*** the AIF or its unit-holders, ***while taking***

into account that procedures for compensation are to be proportionate to the amount unduly charged, in particular from a technical and operational standpoint.';

(4) in Article 56(1), the following sentence is inserted after the first sentence:

'The powers to adopt delegated acts referred to in Article 12 shall be conferred on the Commission for a period of 4 years from [OJ: insert date of entry into force of the amending Directive].';

Article 6

Transposition

1. Member States shall adopt and publish, by … [OP please insert the date = 12 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

2. They shall apply those provisions from … [OP please insert the date = 18 months after ***the publication in the Official Journal of the European Union of the delegated acts referred to in Articles 89 of Directive 2014/65/EU, Article 38 of Directive 2016/97, Article 112a(2) of Directive 2009/65/EC and Article 56 of Directive 2011/61/EC***].

3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 7

Entry into force

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

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

In Annex II to Directive 2014/65/EU, section II.1 is amended as follows:

(1) the fourth subparagraph is replaced by the following:

'The fitness test applied to managers and directors of entities ***authorised*** under the ***present*** Directive or other EU Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.';

(2) subparagraph 5 is amended as follows:

(-1) the first indent is replaced by the following:

'— the client has carried out transactions, in significant size, on the relevant market on a regular basis,

ESMA shall develop draft regulatory technical standards to determine the frequency and the size of the transactions that need to be carried out for relevant market categories.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 6 months after the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt those regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(1) the second and third indents are replaced by the following:

'- the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 250 000 on average during the last 3 years,';

- the client works or has worked in the financial sector ***or in another sector in relation to the investment decision*** or ***has*** undertaken capital market activities requiring to buy and sell financial instruments and/or to manage a portfolio of financial instruments for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.';

(2) the following indent is added:

' - the client can provide the firm with proof of a recognised education or training that evidences his/her understanding of the relevant transactions or services envisaged and his/her ability to evaluate adequately the risks. ***This criterion shall not be combined exclusively with the criteria on the size of the client's financial portfolio.***';

(3) the following subparagraphs are added:

'Where the client is a legal entity, as a minimum, two of the following criteria shall be met:

- balance sheet total: EUR 10 000 000
- net turnover: EUR 20 000 000

- own funds: EUR 1 000 000

The investment firm shall assess that the legal representative of that legal entity or the person responsible for the investment transactions on behalf of that legal entity, understands the relevant transactions or services envisaged, is capable of making investment decisions in line with the legal entity's objectives, needs and financial capacity and is able to evaluate adequately the risks.'.

ANNEX II

Annex V *to Directive 2014/65/EU is amended as follows:*

‘**Annex** V

Minimum professional knowledge and competence requirements

(as referred to in Article 24d(2))

(a) understand the key characteristics, risks and features of the financial instruments being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions;

(b) understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;

(c) understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;

(d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;

(e) understand the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;

(f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;

(g) understand the general implications of the main elements of the financial regulatory framework;

(h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;

(i) understand specific market structures for the type of financial instruments offered or recommended to clients;

(j) understand the valuation principles for the type of financial instruments offered or recommended to clients;

(k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;

(l) understand the concept of sustainable investment ***contributing to an environmental or social objective*** and how to consider and integrate sustainability factors and client’s sustainability preferences into the advisory processes.’

ANNEX III

In part I of Annex I to Directive (EU) 2016/97, the following point is added:

'ha) for insurance-based investments products, minimum necessary knowledge of sustainable investments contributing to an environmental or social objective, including how to consider and integrate sustainability factors and clients' sustainability preferences into the advisory processes.';

Part II of Annex I to Directive (EU) 2016/97 is amended as follows:

(1) point (a) is replaced by the following:

'(a) minimum necessary knowledge of the key characteristics, risks and features of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits as well as the financial risks borne by policyholders and any general tax implications to be incurred by the client;';

(2) the following point (aa) is inserted:

'(aa) minimum necessary knowledge of the total costs and charges to be incurred by the client in the context of the type of insurance-based investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;';

(3) point (c) is replaced by the following:

'(c) minimum necessary financial competency, including:

(i) understanding how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;

(ii) understanding the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;

(iii) understanding of the difference between past performance and future performance scenarios as well as the limits of forecasting;

(iv) understanding of specific market structures for the type of financial instruments offered or recommended to clients;

(v) understanding of the valuation principles for the type of financial instruments offered or recommended to clients;';

(4) the following points (fa) and (fb) are inserted:

'(fa) minimum necessary knowledge to assess data relevant to the insurance-based investment products offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;

(fb) minimum necessary knowledge of the general implications of the main elements of the financial regulatory framework;';

(5) point (i) is replaced by the following:

‘(i) minimum necessary knowledge of assessing customer needs, including understanding of how the type of insurance-based investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;’;

(6) the following point (ia) is inserted:

‘(ia) understanding the concept of sustainable investment and how to consider and integrate sustainability factors and customer’s sustainability preferences into the advisory processes;’

(6a) the following point (ka) is inserted:

‘(ka) for insurance-based investment products, minimum necessary knowledge of sustainable investments contributing to an environmental or social objective, including how to consider and integrate sustainability factors and clients’ sustainability preferences into the advisory processes.’;

(7) point (l) is deleted.

In part III of Annex I to Directive (EU) 2016/97, the following point is added:

‘(ia) for insurance-based investment products, minimum necessary knowledge of sustainable investments contributing to an environmental or social objective, including how to consider and integrate sustainability factors and clients’ sustainability preferences into the advisory processes.’.

ANNEX: ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that she has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
EIOPA
ESMA
Commission
Insurance Europe
ACPR
AMF
EFAMA
AFG
Banque de France (financial litteracy unit)
InvestEurope
Finans Denmark
ICI Global
Amundi
FESE
EBF
NFU (Nordic financial Union)
Nordic securities association

The list above is drawn up under the exclusive responsibility of the rapporteur.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules
References	COM(2023)0279 – C9-0182/2023 – 2023/0167(COD)
Date submitted to Parliament	25.5.2023
Committee responsible Date announced in plenary	ECON 10.7.2023
Committees asked for opinions Date announced in plenary	BUDG JURI 10.7.2023 10.7.2023
Not delivering opinions Date of decision	BUDG JURI 28.6.2023 26.6.2023
Rapporteurs Date appointed	Stéphanie Yon-Courtin 30.5.2023
Discussed in committee	20.9.2023 24.10.2023
Date adopted	20.3.2024
Result of final vote	+: 32 –: 21 0: 1
Members present for the final vote	Marek Belka, Isabel Benjumea Benjumea, Gilles Boyer, Markus Ferber, Jonás Fernández, José Manuel García-Margallo y Marfil, Valentino Grant, Claude Gruffat, José Gusmão, Michiel Hoogeveen, Stasys Jakeliūnas, France Jamet, Othmar Karas, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtsos, Aurore Lalucq, Philippe Lamberts, Pedro Marques, Caroline Nagtegaal, Denis Nesci, Luděk Niedermayer, Lídia Pereira, Kira Marie Peter-Hansen, Sirpa Pietikäinen, Eva Maria Poptcheva, Antonio Maria Rinaldi, Dorien Rookmaker, Ralf Seekatz, Aušra Seibutytė, Pedro Silva Pereira, Inese Vaidere, Stéphanie Yon-Courtin, Marco Zanni
Substitutes present for the final vote	Fabio Massimo Castaldo, Herbert Dorfmann, Eider Gardiazabal Rubial, Margarida Marques, Ville Niinistö, Henk Jan Ormel, Jan OVELGÖNNE, Jessica Polfjärd
Substitutes under Rule 209(7) present for the final vote	Alessandra Basso, Theresa Bielowski, Karolin Braunsberger-Reinhold, Isabel García Muñoz, Paola Ghidoni, Nicolás González Casares, Guy Lavocat, Maria Noichl, Nacho Sánchez Amor, Michaela Šojdrová, Kim Van Sparrentak, Carlos Zorrinho
Date tabled	2.4.2024

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

32	+
ECR	Michiel Hoogeveen, Denis Nesci
ID	Alessandra Basso, Paola Ghidoni, Valentino Grant, France Jamet, Antonio Maria Rinaldi, Marco Zanni
PPE	Isabel Benjumea Benjumea, Karolin Braunsberger-Reinhold, Herbert Dorfmann, Markus Ferber, José Manuel García-Margallo y Marfil, Othmar Karas, Luděk Niedermayer, Henk Jan Ormel, Lídia Pereira, Sirpa Pietikäinen, Jessica Polfjärd, Ralf Seekatz, Aušra Seibutytė, Michaela Šojdrová, Inese Vaidere
Renew	Gilles Boyer, Fabio Massimo Castaldo, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtsos, Guy Lavocat, Caroline Nagtegaal, Eva Maria Poptcheva, Stéphanie Yon-Courtin

21	-
ECR	Dorien Rookmaker
S&D	Marek Belka, Theresa Bielowski, Jonás Fernández, Isabel García Muñoz, Eider Gardiazabal Rubial, Nicolás González Casares, Aurore Lalucq, Margarida Marques, Pedro Marques, Maria Noichl, Nacho Sánchez Amor, Pedro Silva Pereira, Carlos Zorrinho
The Left	José Gusmão
Verts/ALE	Claude Gruffat, Stasys Jakeliūnas, Philippe Lamberts, Ville Niinistö, Kira Marie Peter-Hansen, Kim Van Sparrentak

1	0
Verts/ALE	Jan Ovelgönne

Key to symbols:
+ : in favour
- : against
0 : abstention