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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

(Text with EEA relevance)

{SWD(2023) 278-279 final} - {SEC(2023) 330 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In line with the European Commission's objective of "an economy that works for people", and as announced in the 2023 work programme, the Commission is seeking to ensure that the legal framework for retail investments sufficiently empowers consumers, encourages improved and fairer market outcomes and ultimately creates the necessary conditions to grow retail investor participation in capital markets.

In its September 2020 new Capital Markets Union action plan[1], the Commission announced its intention to put forward a strategy for retail investments in Europe, aimed at ensuring that retail investors can take full advantage of capital markets and that they are supported by rules that are coherent across all relevant legal instruments.

The core objective of the Capital Markets Union (CMU) is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. While retail participation in capital markets varies widely across Member States, reflecting different historical and socio-economic conditions, retail investors should be able to achieve better investment outcomes than is currently the case when participating in EU capital markets.

This goal is shared by the co-legislators:

– On 3 December 2020, in its Council Conclusions on the Commission's CMU action plan[2], the Council called on the Commission to initiate implementation of the parts of the action plan that aim to boost investment activity, particularly by retail investors inside the EU, while ensuring a high level of consumer and investor protection.

– On 8 October 2020, the European Parliament adopted a Resolution on the further development of the Capital Markets Union[3] that was largely supportive of measures to increase retail investor participation in capital markets. The Resolution emphasised that increased retail investor participation is contingent on a change in investment culture, and that such a change could only come into effect when retail investors become convinced that investing in capital markets is desirable while being subject to acceptable and clearly defined risks.

The Commission has concerns that capital markets do not sufficiently serve the long-term financing needs of EU citizens, who are often too heavily reliant on low-yielding savings. The Commission has identified a number of significant problems along the retail investor journey which diminish the ability of retail investors to take full advantage of capital markets: (1) retail investors have difficulties accessing relevant, comparable and easily understandable investment product information to help them make informed investment choices; (2) retail investors are exposed to a growing risk of being inappropriately influenced by unrealistic marketing information through digital channels and misleading marketing practices; (3) there

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[1] https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-2020-action-plan_en

[2] https://data.consilium.europa.eu/doc/document/ST-12898-2020-REV-1/en/pdf

[3] https://www.europarl.europa.eu/doceo/document/TA-9-2020-0266_EN.html

are shortcomings in the way products are manufactured and distributed, linked to conflicts of interest that may arise as a result of the payment of inducements between product manufacturers and distributors; and (4) some investment products incorporate unjustifiably high levels of costs and consequently do not always offer Value for Money to the retail investor. Differences in the way rules are designed across legal instruments also have the potential to confuse investors and result in varying levels of investor protection.

These problems undermine retail investors' trust in capital markets. According to a recent Eurobarometer survey[4], only 38% of consumers are confident that the investment advice they receive from financial intermediaries is primarily in their best interest. Lack of trust is one of the reasons contributing to lower levels of retail participation and is a drag on retail growth potential[5].

At the same time, financial literacy in the EU is too low. For too many people, the financial system can seem complex and impenetrable. People often lack the confidence, knowledge and skills to manage their everyday finances and to take important financial decisions, such as saving to buy a house or preparing for retirement. Low levels of financial literacy can impact an individual's personal and financial well-being, particularly for vulnerable groups in society. Increasing financial literacy has therefore become one of the Commission's key priorities[6] and is all the more important given the ongoing digitalisation of finance. Financial education[7] should be better tailored to meet the diverse needs of different groups of citizens. Central to this is empowering individuals to understand the benefits and risks involved when investing and the advice they receive, in order to make financial decisions in their best interests. This does not entail the expectation for people to become experts in financial services, but rather that they have the requisite knowledge, information and confidence to make decisions to meet their financial needs.

Considering the general economic context against which the measures in this strategy are assessed, the EU market for retail investments remains characterised by low levels of participation when compared with international peers. In 2021, approximately 17% of EU27 household assets were held in financial securities (listed shares, bonds, mutual funds and financial derivatives). In comparison, households in the US held around 43% of their assets in securities[8].

The EU retail investment strategy aims to strengthen the legislative framework to ensure that retail investors (1) are empowered to take more informed investment decisions that better correspond to their needs and objectives, and (2) are adequately protected in the single market

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4 Eurobarometer survey monitoring the level of financial literacy in the EU, 2023. The relevant question is Q12: "How confident are you that investment advice you receive from your bank/insurer/financial advisor is primarily in your best interest?".

5 Eurobarometer survey on Retail Financial Services and Products, October 2022. Other influencing factors are the lack of financial means, concerns about the risks, uncertainty about the potential returns, lack of understanding/complexity and a preference to put money elsewhere

6 It is worth noting that also the founding Regulations of the European Supervisory Authorities contain a mandate to review and coordinate financial literacy and education initiatives by the competent authorities (article 9(1)(b) of the three founding Regulations.

7 In this context, 'financial education' indicates the formal or informal process through which individuals acquire financial literacy (the outcome).

8 Based on Eurostat's sectoral national accounts (international data cooperation, NAID_10). If claims against insurers and pension entitlements were added, the numbers would change to 46% for the EU and 72% for the US (see Chapter 1.1 of the impact assessment).

by a coherent regulatory framework. This will enhance trust and confidence bringing citizens closer to capital markets and enhancing retail investor participation.

The EU retail investment strategy addresses a wide variety of issues along the retail investor journey, including financial literacy, client categorisation, disclosure and marketing rules, suitability and appropriateness rules, rules on advice including as regards inducements, and product governance rules. It proposes an enhanced framework to further improve transparency, in particular as regards cost; strengthened rules against misleading marketing communication; rules to ensure impartial and high-quality advice; and rules to ensure that products distributed to retail investors offer the prospect of Value for Money. The aim is to ensure a modernised and, as far as possible, simplified framework for retail investment which is aligned and coherent across the different sectors. While the key focus of the EU retail investment strategy is to ensure that the interests of retail investors are addressed, the EU retail investment strategy also addresses specific industry concerns, in particular by removing inconsistencies and overlaps of information requirements, and by adapting the provisions on regulatory disclosures so that they are fit for digital use.

- **Consistency with existing policy provisions in the policy area**

This proposal follows from Action 8 of the September 2020 New Capital Markets Union Action Plan, which is about building retail investors' trust in capital markets.

The proposal shares the objectives of existing legislation governing retail investor protection at EU level, which consists of the Markets in financial instruments Directive (MiFID[9]) and the Insurance Distribution Directive (IDD[10]), as it seeks to ensure a sufficient degree of investor protection as well as fairness, integrity and efficiency in the provision of investment and insurance-based investment services to retail investors. In addition, it is consistent with the rulebook applying to investment and insurance-based investment services, as well as investment funds and their managers (which, in addition to MiFID and IDD, also includes the Solvency II Directive[11], the Directive on undertakings for collective investment in transferable securities (UCITS)[12] and the Alternative Investment Fund Managers Directive (AIFMD)[13]).

This proposal is adopted as one part of a package, together with a second legislative proposal (COM (2023) 278) which amends the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs)[14]. The amending Regulation is fully complementary with this Omnibus Directive, as it aims to improve the legal framework for

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9 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

10 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)

11 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) (recast)

12 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast)

13 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

14 Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

PRIIPs by adapting disclosures to the digital environment and the evolving needs of retail investors notably on sustainability, and by providing further clarity on the scope of PRIIPs with regards to corporate bonds with make-whole clauses and immediate annuities. Some of the changes, notably with regard to the use of electronic format, are proposed to better align with the approach under MiFID and IDD and build on the experience gained from the implementation of the pan-European personal pension product (PEPP)[15] disclosure document.

A significant step to ensuring consistency and simplification of pre-contractual information requirements across financial services was taken when the Commission adopted its proposal to amend Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2002/65/EC. Consequently, concerns about overlapping and inconsistent requirements regarding disclosures in the area of retail investments have been largely addressed resulting in a more streamlined and simplified framework.

The measures proposed below are expected to make the EU an even safer place for retail investors, help build their trust and facilitate their participation in capital markets on fairer terms. The current demographic trends require an enhanced planning by households to ensure a smooth lifecycle. In this respect, having a safer framework for investments in capital markets should help offering retail investors a wider range of opportunities. Enhanced retail investor participation in capital markets also has the potential to help increase the capital pool available for the market financing of economic activities and to enable companies to better diversify their sources of funding. In this regard, the proposal is consistent with a number of legislative and non-legislative actions taken by the Commission under its 2015 CMU action plan,[16] the 2017 mid-term review of the CMU action plan[17] and the 2020 CMU action plan[18], aimed at facilitating access to finance for companies, especially SMEs, with a view to supporting jobs and growth in the EU.

- **Consistency with other Union policies**

Given its focus on the increasing digitalisation of investment services and marketing, the proposal is aligned with the Commission's work on consumer protection in the context of digital finance[19], which aims at ensuring that consumers enjoy the benefits of digitalisation while being sufficiently protected from the risks arising from it. A key piece of consumer protection legislation in this area is the Digital Services Act[20], whose objective is ensuring a fairer, more transparent and accountable online environment for consumers.

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15 Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP)

16 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on Building a Capital Markets
Union COM(2015) 468 final

17 Communication from the Commission on the mid-term review of the capital markets union action plan ({SWD(2017) 224 final} and {SWD(2017) 225 final} – 8 June 2017)

18 Communication from the Commission to the European Parliament, the Council, the European Economic and
Social Committee and the Committee of the Regions, A Capital Markets Union for people and businesses-new
action plan. COM/2020/590 final

19 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0591

20 Regulation (EU) 2022/2065 of the European Parliament and of the Council

This proposal is also aligned with the objectives of upcoming Commission initiatives which will seek to facilitate data sharing within the financial services sector[21]. With the standardised report on information collected by a firm on its client for the purpose of the suitability or appropriateness assessment, this initiative is expected to facilitate, if the client requests that report, more seamless and cost-effective data sharing and re-use of such information by other firms selected by the client. In turn, this should benefit consumers through improved more efficient and innovative products and services and should facilitate competition by increasing transparency and reducing switching costs.

For the proposed measures in the area of financial literacy, support is available from the Commission through the Technical Support Instrument[22].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The EU has in place a legislative framework governing retail investor protection, which has been developed over several decades. The level of retail investor protection has been significantly strengthened over the years, in particular following the 2008 financial crisis. The current comprehensive legislative framework consists of five legal instruments which aim to harmonise – on a sector-by-sector basis – the requirements for retail investor protection in the area of investment services, insurance-based investment and asset management. The Directives subject to amendments in this proposal (the 'Directives') provide for regulatory frameworks on:

– the provision of investment services ('MiFID'),

– the provision of insurance or reinsurance distribution services to third parties ('IDD'),

– the take-up and pursuit of insurance business within the EU ('Solvency II'),

– the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ('UCITS'),

– Alternative Investment Fund Managers ('AIFMD').

The legal bases of the Directives are Articles 53(1) and, in particular in the case of Directives (EU) 2009/138/EC and 2016/97, Article 62 of the Treaty on the Functioning of the European Union. EU-level action in accordance with these Articles is needed to continue aligning the current rules or to introduce new standardised rules.

• Subsidiarity (for non-exclusive competence)

According to the principle of subsidiarity, EU action may only be taken if the envisaged aims cannot be achieved by Member States alone. Regulation of investment services, the provision of insurance-based investment products, rules for UCITS and alternative investment funds and their managers (AIFMD) are long established at EU level. This is because only EU action can set a common regulatory framework that ensures the same level of retail investor

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of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)

21 https://commission.europa.eu/system/files/2022-10/com_2022_548_3_en.pdf

22 See: https://reform-support.ec.europa.eu/what-we-do/financial-sector-and-access-finance_en

protection across Member States, independently of the type of investment products or services offered and in full respect of the freedom of establishment and freedom to provide services. In this regard, this proposal, like the Directives it seeks to amend, is in full compliance with the principle of subsidiarity.

- **Proportionality**

This proposal aims to amend certain provisions of the Directives, in particular those on information provided to retail clients before and after making investments decisions; requirements on the marketing of investment products to retail clients; product oversight and governance; requirements for the provision of advice and other distribution services of investment products to retail clients; professional qualifications; and cross-border supervision. The amendments are necessary and proportionate to strengthen retail investor protection, while considering market participants' interests and cost-efficiency.

- **Choice of the instrument**

As this proposal aims to amend the existing Directives 2014/65/EU, 2016/97, 2009/138/EC, 2011/61/EU, and (EU) 2014/91, the instrument chosen is an amending directive. The choice of a single amending directive is based on the objective of the EU retail investment strategy to achieve the same level of retail investor protection throughout the EU and across all investment products and distribution channels. This can be most effectively achieved through the enactment of consistent and, where needed, uniform requirements for all relevant sectors.

3. RESULTS OF *EX-POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex-post* evaluations/fitness checks of existing legislation**

The annex to the accompanying impact assessment contains an evaluation of the legislative framework specifically relating to retail investor protection. The principal conclusions are that the frameworks applicable to retail investors are broadly effective and coherent, continue to address needs and problems, and bring the intended added value. However, the evaluation also concluded that the intended objectives were not sufficiently achieved in areas such as disclosure of information, inducements and advice, product governance requirements and suitability assessments.

Despite existing rules governing disclosures, information can still be complex (in particular relating to costs), or not sufficiently useful or relevant to guide retail investors so that they make informed decisions. The investor protection rules governing disclosures and marketing communications are also not sufficiently adapted to the newly emerging and constantly evolving risks associated with the rapid growth of digital channels offering services.

With respect to the payment of inducements and the provision of advice, the existing safeguards, including transparency requirements, are not sufficient to address the potential conflicts of interest for financial service providers, given the existing information asymmetry between retail investors and such providers. The potential conflicts of interest due to the payment of inducements can lead to a product-bias on the part of financial advisors, resulting in the sale of more expensive products to retail investors or products which may not be in their best interest.

The current rules on product oversight and governance have set out a framework to govern the way products are designed and distributed. However, further improvement is needed to ensure

that only products that deliver Value for Money are offered to retail investors. Some retail investment products on the market still incorporate unjustifiably high costs and/or do not offer value to retail investors.

Finally, the suitability and appropriateness assessment tests have been found to be broadly effective and efficient but they can be further improved to ensure that the assessments are performed at the right time (i.e. before products are recommended), to remove inconsistent practices and to ensure that they are adapted to the digital environment, and to take into account the investor's need for portfolio diversification.

- **Stakeholder consultations**

The European Commission carried out various consultation activities as part of the preparation of this proposal.

Between May and August 2021, a public consultation on 'A retail investment strategy for Europe' gathered views from a broad group of stakeholders on various aspects pertaining to retail investments, namely: pre-contractual disclosures (including PRIIPs), inducements and quality of advice, the suitability and appropriateness assessments, financial literacy, complexity of products, the impact of increased digitalisation of financial services, investor categorisation, redress, the ESAs' product intervention powers and sustainable investing.

186 responses were received from a variety of stakeholders representing business associations and organisations (59%), consumer organizations (2%), NGOs (5%), public authorities (9%), trade unions (2%), and citizens (19%). In addition, the Commission discussed various aspects of the review at several meetings of a group of Member State experts.

The results of the public consultation were considered in the proposal and the Commission sought to take account of the different stakeholder interests expressed. The most significant areas, where scope for improvements to the framework was identified by the respondents, were examined and are part of the proposal. These include financial literacy which was flagged by all groups of stakeholders, disclosure of information, suitability and appropriateness assessments and inducements and advice.

- **Collection and use of expertise**

Following formal requests for advice[23] issued by the Commission on 27 July 2021, both ESMA and EIOPA provided an Opinion[24,25] on 29 April 2022. ESMA and EIOPA's Opinions informed the Commission's impact assessment and the development of this proposal.

Annex 2 of the accompanying impact assessment lists additional sources considered when preparing this proposal, including targeted stakeholder consultations and outreaches. The Commission also relied on extensive research literature, which is referenced in the impact assessment, in particular a specially commissioned study carried out by a consortium of

[23] Ref Ares(2021)4803687- 27/07/2021 and Ref Ares(2021)4805409- 27/07/2021
[24] Ref. ESMA35-42-1227
[25] Ref. EIOPA-BoS-22/244

consultants led by Kantar, 'Disclosure, inducements, and suitability rules for retail investors study', published in 2022[26].

The preparation of this proposal also benefited from the advice of the CMU High-Level Forum (CMU HLF), and contributions from the Financial Services User Group (FSUG)[27]. Discussions were also held at meetings of the Government Expert Group on Retail Financial Services (GEGRFS), where Member States experts expressed support for the objectives of the retail investment strategy, but at the same time a large majority of Member States expressed concerns about potential disruptive effects of a ban on inducements to retail investment distribution systems.

- **Impact assessment**

This proposal is accompanied by an impact assessment (SWD(2023) 278). The impact assessment was submitted to the Regulatory Scrutiny Board (RSB) on 14 December 2022, and received a positive opinion with reservations on 20 January 2023 (SEC(2023) 330). It was subsequently amended to reflect the consultation with the RSB.

Overall, the impact assessment focuses on identifying and addressing specific failures at key stages of the retail distribution and investment process. It looks at issues that prevent retail clients from making the best use of investment product information (in PRIIPs, MiFID and IDD); it addresses the rules governing conflicts of interest, arising from inducements, at the 'point of sale' and at the production stage of investment products and services (in both MiFID and IDD), and it looks into product oversight and governance rules (for both distributors, hence in MiFID and IDD, and for product manufacturers, in UCITS, MiFID and IDD) to ensure that retail clients obtain value from their investment ('Value for Money').

For each of the three principal areas identified, namely (1) disclosure and marketing communications, (2) inducements and (3) Value for Money, the impact assessment assesses two alternative or, in the case of disclosures, two complementary policy options, in addition to the baseline scenario.

In the case of disclosures, the impact assessment considers targeted changes to disclosure rules aimed at improving their relevance for retail investors alongside targeted changes to address information deficiencies relating to marketing communications. As both options are complementary and present an improvement compared to the baseline scenario at a reasonable cost, they are both, cumulatively, the preferred option.

In the case of inducements, a choice between maintaining the current system to allow the payment of inducements under certain conditions while improving and harmonising sector-specific disclosures about inducements was assessed against a ban on all forms of inducements, including a subvariant containing a partial ban applied in the case of non-advised services (execution only). The impact assessment concludes that an EU-wide full ban

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26 https://op.europa.eu/en/publication-detail/-/publication/d83364e5-ab55-11ed-b508-01aa75ed71a1/language-en/

27 The FSUG gathers experts representing the interests of consumers, retail investors or micro-enterprises notably to advise the Commission in the preparation and implementation of legislation or policy initiatives affecting the users of financial services. More information is available here: https://finance.ec.europa.eu/regulation-and-supervision/expert-groups-comitology-and-other-committees/financial-services-user-group-fsug_en.

would be the most effective measure to remove or significantly reduce potential conflicts of interest, by reducing an important source of consumer detriment.

However, an immediate and full ban on inducements would entail significant and sudden impacts on existing distribution systems, with consequences that are hard to predict. A partial ban would, on the other hand, have less impact on existing distribution systems, while still delivering benefits for retail investors. For this reason, the Commission took the decision not to put forward a full ban on inducements as part of this proposal.

Instead, as part of a staged approach, intended to allow operators to adjust their distribution systems and minimise the costs of such a change, this legislative package proposes to address the conflicts of interest that may arise due to the payment of inducements via a number of different measures including:

– a measure aimed at prohibiting the payment of inducements in execution-only environments where no advice is provided;
– a strengthened 'best interest of the client' principle applied in both MiFID and IDD;
– improved disclosures to the client regarding the payment of inducements, including a simple explanation of inducements.

The Commission will closely monitor the impact of these measures on the market, which will be based on in-depth information (provided as part of the obligations of the Value for Money approach). Three years after the adoption of the package, the Commission will assess the effects of this inducements regime on retail investors, in light of the additional safeguards taken, and will draft a report to the European Parliament and the Council. Where the assessment shows that the detriment to consumers remains, despite the additional safeguards, the Commission will consider proposing alternative measures in line with Better Regulation rules, including further extending the ban on inducements.

In the case of Value for Money, the impact assessment considered a choice between strengthening product governance rules for manufacturers[28] by requiring the comparison of their products against relevant 'manufacturer benchmarks'[29], and an alternative option to impose similar duties also at the level of distributors[30], including the comparison of certain products with relevant 'distributor benchmarks'[31]. The latter option, applying duties to both manufacturers and distributors, was considered the more effective and comprehensive way to ensure that investors are offered cost effective products.

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28 Entities regulated by MiFID, Solvency II, IDD, UCITS or AIFMD producing their own investment products.

29 As part of their product oversight and governance measures, manufacturers would be required to identify and quantify the costs related to each investment product (both for existing and new products) and justify that it offers Value for Money to the target market, including when compared to other products on the market, based on product type-specific cost and performance benchmarks ('manufacturer benchmarks').

30 Entities regulated by MiFID, Solvency II, IDD, UCITS or AIFMD distributing to clients products which they manufacture or acting as an intermediaries and distributing products manufactured by other entities.

31 Similarly to manufacturer benchmarks, distributors of investment products would be required to assess how the products they distribute compare to relevant benchmarks ('distributor benchmarks') for similar products in the market.

The impact assessment considered a number of additional measures intended to further complete and complement the legislative package. These measures are designed to ensure improved supervisory enforcement, better qualified advisors, easing of criteria to be considered as a professional investor, a more efficient investor screening process, improved financial literacy levels and more flexibility for knowledgeable investors to access a wider set of products and services without unnecessary red tape.

Taken together, the package of measures is expected to increase retail investor protection and lead to better quality investment products for retail clients that yield better Value for Money (i.e., better quality and more cost-efficient products). This would both benefit existing investors, and encourage more citizens to invest. The impact assessment concludes that these reforms will generate some additional costs for the financial industry. These costs have been quantified in the impact assessment.

The impact assessment has been revised to address the comments of the RSB. The main improvements can be summarised as follows:

– With respect to the scope and scale of the problem and its effects on the retail financial services ecosystem, the underlying economic context is better explained and substantiated with data in the final text. Consumer detriment is explained better, as is the description of issues which now highlights the need to take urgent action. The presentation of the key policy choices and flanking measures in the final text also discusses certain elements of the policy options in more detail.

– Further quantifications and analyses have been included. The overall presentation of the costs and benefits of the preferred option package has been improved. Additional estimates of the impact of the inducement ban and the Value for Money measures are provided. Limitations regarding the quantification of disclosure measures are explained in more detail. Moreover, the final text has a more in-depth discussion of qualitative economic effects, including, among other things, a discussion on how certain measures are interlinked. Finally, an SME test has been added to the annexes.

– With respect to the 'flanking measures' which contribute to addressing the identified problems in addition to the main measures, the final text includes an additional table setting out the flanking measures that are assessed in annex, the problem that they seek to address and the objective they seek to achieve. The text also includes an explanation as to how the flanking measures interact with preferred options and produce synergy effects. A paragraph has been added outlining an alternative combination of options that was considered, which did not include an inducement ban. The paragraph also includes an explanation as to why the inducement ban was not taken up.

- **Regulatory fitness and simplification**

The proposed Directive improves regulatory fitness and simplifies the framework as follows:

– It removes inconsistencies and overlaps of requirements concerning the provision of information to clients that exist between Solvency II, IDD and PRIIPs as regards insurance-based investment products, something which can benefit insurance undertakings and insurance intermediaries, while preserving high retail investor protection.

– It introduces regulatory alleviations in MiFID for those investors with appropriate knowledge, experience, and ability to bear losses. This implies a reduction in

information overload for such investors and a more efficient use of resources for product manufacturers and distributors.

– As regards digital readiness, the provisions on regulatory disclosures and on marketing to retail clients are adapted to be fit for digital use by ensuring electronic format as default, clarifying how product disclosures should be presented in a digital environment and introducing additional safeguards for marketing communications, including via social media and other digital channels.

On the other hand, additional administrative costs will arise from supervisory reporting against the Value for Money benchmarks that will be developed by ESMA and EIOPA. This obligation will imply one-off costs and ongoing costs for both manufacturers and distributors[32].

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the freedom to conduct a business (Article 16) and consumer protection (Article 38). The proposal may interfere with rights to respect for private and family life (Article 7) and to personal data protection (Article 8) by expending the categories of personal data that are required for the appropriateness assessment of retail investors and requiring to retain personal data of investment marketing influencers when these influencers are natural persons. However, it is necessary and proportionate for ensuring a high level of protection of consumers in line with Article 52.

4. BUDGETARY IMPLICATIONS

The proposal is expected to have budgetary implications as a consequence of a number of new tasks conferred to ESMA and EIOPA.

For ESMA, allocation of an additional 6 full time employees (FTE) is needed for its workload and to take on the tasks of developing and administering Value for Money benchmarks and gathering and processing data received from NCAs. ESMA will also require additional budget for operational expenditure of EUR 1.5 million for the first three years of implementation to cover IT costs and costs related to externally contracted consumer testing of new consumer-facing disclosure tools, as well as the setting up and administering of collaboration platforms for NCAs.

For EIOPA, these new tasks will require over time a total of 3 FTE to take on the tasks of developing and administering Value for Money benchmarks and gathering and processing data received from NCAs. EIOPA will also require additional budget for operational expenditure of EUR 1.26 million for the first three years of implementation to access required data and to cover costs related to externally contracted consumer testing of new consumer-facing disclosure tools, as well as the setting up and administering of collaboration platforms for NCAs.

The financial and budgetary impacts of this proposal are explained in detail in the legislative financial statement annexed to this proposal.

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[32] See Chapters 6.3 and 7 of the impact assessment.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor progress towards achieving the specific objectives based on the non-exhaustive list of indicators in Section 8 of the accompanying impact assessment.

Five years after implementation, the Commission will carry out the next evaluation of the amendments of this proposal, in line with the Commission's Better Regulation Guidelines.

This proposal does not require an implementation plan.

- **Explanatory documents (for directives)**

No explanatory documents are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

General structure of the proposal

This Omnibus amending Directive consists of five main sections referring to the different Directives to be amended. Article 1 of the proposal contains amendments to MiFID, while Article 2 proposes amendments to IDD. Article 3 contains amendments to Solvency II, while Articles 4 and 5 propose changes to UCITS and AIFMD respectively. The Explanatory Memorandum explains the proposed amendments per topic across the different Directives concerned.

Disclosure information: aiming to simplify and reduce the information presented to retail investors

The proposal contains a number of improvements to the regulatory disclosures framework which aim to ensure transparency for retail investors and enable them to take informed decisions.

Article 1(12), point (f) and Article 2(20) introduce a new paragraph 5c in Article 24 MiFID and a new paragraph 5 in Article 29 IDD respectively, requiring investment firms as well as insurance intermediaries and insurance undertakings distributing insurance-based investment products to display appropriate risk warnings in all information materials concerning particularly risky products, to alert retail investors to specific risks of potential financial losses. Article 1(17) point (c) and Article 2(6) introduce a new point (w) in Article 69(2) MiFID and point (q) in Article 12(3) IDD respectively, which state that Member States will need to ensure that competent authorities have the power to impose the use of risk warnings for particularly risky products. A mandate is given to ESMA and EIOPA to develop guidelines specifying the concept of particularly risky financial products, as well as implementing technical standards specifying the content and format of such risk warnings (Article 1(12), new paragraph 5c in Article 24 MiFID and Article 2(20), new paragraph 5 in Article 29 IDD).

Article 1(12) and Article 2(20) introduce a new paragraph (new Article 24(5c) MiFID and new Article 29(5) IDD) empowering ESMA and EIOPA, respectively, to impose the use of risk warnings on investment firms, insurance undertakings and insurance intermediaries, after consultation with the relevant competent authority/ies. They are empowered to do so in case of concerns that the use (or absence) of risk warnings may have a material impact on investor protection.

Article 2(15) introduces a new provision in Article 23 IDD (new Article 23(1)) that allows digital-by-default disclosure of information, in line with an obligation that already exists under MiFID. This rule will apply to all insurance products and is thus not limited to insurance-based investment products only. Article 1(12) point (g) introduces a new paragraph 5b in Article 24 MiFID and Article 2(15) introduces a new paragraph 4 in Article 23 IDD, mandating ESMA and EIOPA, respectively, to develop guidelines relating to the disclosure of information in electronic format.

Article 1(13) introduces a new Article 24b in MiFID, which deals exclusively with investment firms' regulatory disclosures on costs, associated charges and payments made by third parties. Parts of already existing provisions on costs and charges under Article 24(4) MiFID are moved to Article 24b(1) MiFID. Article 24b MiFID additionally prescribes standardisation of the presentation of such information on costs, associated charges and third-party payments. It also requires, specifically on third-party payments, an explanation of their purpose and quantification of their impact on expected returns, in a standardised and comprehensible way. Article 2(20) amends Article 29 IDD to improve and complement the already existing provisions on pre-contractual disclosures in the distribution of insurance-based investment products. In doing so, it also adds a requirement in Article29(1) IDD to disclose information on all costs, associated charges and third-party payments, as well as on their impact on expected returns.

Under Articles 24b(2) MiFID and Article 29(4) IDD, ESMA and EIOPA, respectively will have to develop draft regulatory technical standards on the basis of prior consumer testing that will set out the format and terminology that should be used by firms for the disclosure of information on costs and charges under MiFID, and for pre-contractual disclosures under IDD.

The new Articles 24b(4) and (5) MiFID and the additions in Article 29(2) and 29(3) IDD include a requirement for investment firms as well as for insurance undertakings and insurance intermediaries distributing insurance-based investment products to provide all retail clients and customers with an annual statement providing, among other things, information on costs and charges, including third party payments, and performance. They also set out, depending on the investment products offered, the minimum information requirements to be included in the annual statement. In view of the intrinsic long-term characteristics of insurance-based investment products, which are often used for retirement purposes, Article 29(3) IDD requires additional elements of information in the annual statement for these products, such as adjusted individual projections of the expected outcome at the end of the contractual or recommended holding period (point f).

In addition, Article 3(3) and 3(5) of the amending Directive provides for the deletion of Articles 183, 184 and 185 of Solvency II. In Articles 2(11) to (13), these requirements on mandatory pre- or post-contractual information and certain business conduct requirements are modernised and moved to IDD (from Solvency II) through amendments to Articles 18, 20 and 29(3) IDD. The proposed new Article 20(8a) IDD provides for a standardised insurance product information document for life insurance products other than insurance-based investment products. This new and user-friendly document will complement the already existing insurance product information document for non-life products and the PRIIPs KID for insurance-based investment products. Notably, Articles 2(11) to (13) amend IDD requirements relating to all insurance products and thus do not only apply to insurance-based investment products (specifically within the scope of the EU retail investment strategy). This

is to avoid fragmentation in the disclosure rules, which apply to all insurance products and insurance-based investment products alike.

Protecting retail investors from misleading marketing communications and practices which emphasise benefits but downplay the risks

The proposal introduces a number of new provisions to address the risk of unbalanced or misleading marketing communications emphasising benefits only, and to clarify the responsibilities of investment firms and insurance distributors in relation to marketing communications, including when using digital channels and when relying on third parties.

Articles 1(3) and 2(1), point (c), introduce new subparagraphs (66) and (67) in Article 4(1) MiFID, and new subparagraphs (20) and (21) in Article 2(1) IDD, respectively, providing the definitions of marketing communications and marketing practices.

Article 1(7) amends Article 9(3) MiFID to include a requirement for investment firms to have a policy on marketing communications and practices, which the management body of an investment firm should define, approve and oversee.

Article 1(8) point (c) introduces a new paragraph 3a in Article 16 MiFID to include a requirement for investment firms to have effective organisational and administrative arrangements in place to ensure compliance with all obligations related to marketing communications and practices under Article 24c, and related delegated acts.

Since IDD does not provide for detailed organisational requirements for insurance intermediaries, no such specific organisational requirement could be introduced under IDD.

Article 1(12) point (b) amends Article 24(2) of MIFID by requiring investment firms that manufacture financial instruments to ensure that the strategy for the distribution of those financial instruments is compatible with the identified target market also in relation to any marketing communications and marketing practices.

Article 1(13) introduces a new Article 24c MiFID and Article 2(18) inserts a new Article 26a IDD, respectively introducing obligations on investments firms, and on insurance undertakings and insurance intermediaries distributing insurance-based investment products, in relation to marketing communications and marketing practices. The new articles include obligations to clearly identify marketing communications and to ensure they are appropriately attributed to the investment firm, insurance undertaking or insurance intermediary by which or on whose behalf they are made. Essential characteristics of the investment product or service should also be clearly presented in all marketing communications. Marketing communications and practices should also be developed, designed and provided in a manner which is fair, clear and not misleading, and should be balanced in their presentation of risks and benefits as well as appropriate for the target group of investors they are aimed at. This proposal empowers the Commission to adopt a delegated act specifying those essential characteristics and the conditions to an appropriate design.

Article 24c(4) MiFID and Article 26a(4) IDD provide for the division of responsibility with respect to the content and use of marketing communications between manufacturers and distributors of investment products and insurance-based investment products.

Article 24c(5) MiFID and Articles 26a(5) IDD require that Member States ensure firms' management bodies receive annual reports on the use of marketing communications and

strategies aimed at marketing practices, compliance with obligations on marketing communications and marketing practices, and on signalled irregularities and proposed solutions with obligations on marketing communications and marketing practices, pursuant to MiFID and IDD respectively.

Article 24c(7) MIFID and Article 26a(7) IDD extend the existing record keeping obligation to all marketing communications which are directly or indirectly made by the investment firms, insurance undertakings and insurance intermediaries. The obligation covers a period of 5 years, allowing for a derogation of up to 7 years at the request of competent authorities.

Article 24c(6) MiFID and Article 26a(6) IDD impose a requirement on Member States to ensure that national competent authorities have the necessary empowerment to take timely and effective action on non-compliance with the above obligations.

Tackling bias in the advice process: conflicts of interests, inducements and the introduction of a strengthened 'best interest' test for MiFID and IDD

The current rules governing conflicts of interest in the advice process due to the payment of inducement differ between MiFID and IDD. Articles 1(12) and 1(13) amend Article 24 MiFID and introduce a new Article 24a MiFID, while Articles 2(20) and (21) amend Article 29 IDD and introduce a new Article 29a IDD. They cover the obligations of, respectively, investment firms and insurance undertakings and insurance intermediaries distributing insurance-based investment products in relation to the payment of inducements.

In addition to the existing bans on inducements regarding independent advice and portfolio management, which are maintained in MiFID, Article 24a(2) MiFID introduces a ban on inducements paid from manufacturers to distributors in relation to the reception and transmission of orders, or the execution of orders to or on behalf of retail clients. These two investment services cover execution-only sales where no advice relationship exists between the investment firm and the client. Similarly, Article 29a(1) of IDD introduces a ban on inducements paid from manufacturers to distributors in relation to non-advised sales of IBIPs and thus has the same scope. Such partial ban would remove incentives for firms to give more prominence to certain products in their product offering and would benefit retail investors that invest via execution-only services, as they would avoid any charges due to the payment of inducements.

Specifically in relation to MiFID, the existing exemptions to the bans on inducements would continue to be applicable to the ban on inducements for execution-only services (e.g. payments or benefits which enable or are necessary for the provision of investment services, payments in relation to research, etc.). Minor non-monetary benefits not exceeding EUR 100 or of a scale and nature such that they could not be judged to impair compliance with the duty to act in the best interest of the retail investor are also allowed if they are clearly disclosed. Furthermore, as investment advice may be combined with the services of execution of orders and reception and transmission of orders, with the main service being investment advice, Article 24a MiFID clarifies that the ban on inducements in relation to the services of execution of orders and reception and transmission of orders is not applicable to situations where investment firms provide advice to the same client relating to one or more transactions covered by that advice. The ban on inducements is also not applicable in relation to fees or remuneration received or paid from an issuer for placement and underwriting services. To ensure that the latter exemption focuses on instruments that are critical to issuers' ability to

raise funds, such exemption should not apply as regards instruments that qualify as packaged retail investment products.

Revised safeguards are introduced for advised sales, obliging the distributor to ensure that the payment or receipt of inducements does not impair compliance with their duty to act honestly, fairly and professionally in accordance with the best interest of their clients and to disclose the existence, nature and amount of inducements to the clients.

Specifically in relation to IDD, Article 2(22), point (d) strengthens the safeguards for advice in Article 30(5b), and introduces a differentiation between advice given on an independent and non-independent basis in alignment with MiFID, if insurance intermediaries want to present their advice as 'independent'. It does so by making the independent basis category compulsory instead of optional for Member States, and by banning the reception or the provision of inducements in relation to advice given on an independent basis. However, such a ban should not prevent insurance intermediaries from offering advice for which they may receive inducements, provided that the advice is not presented as 'independent' and retail customers are informed of the inducements in line with applicable transparency requirements. In view of the diversity of the insurance distribution structures in the Member States, it should also not prevent insurance intermediaries that are not employed by or contractually tied to an insurance undertaking but receive inducements from presenting themselves as not contractually tied to a specific insurance undertaking.

In addition, Article 1(12), point (a), proposes amendments to Article 24(1a) MiFID and Articles 2(21) and (22), introduce a new Article 29b and amend Article 30 IDD with the view to improving the quality of advice. These amendments further substantiate the obligation for investment firms, insurance undertakings and insurance intermediaries to act in accordance with the best interest of their clients and customers, by introducing a new test with clear criteria which will be applied both in MiFID and IDD (a test which replaces the existing 'quality enhancement' test of MiFID, and the 'no detriment' test of IDD). To act in the best interest of their clients and customers, financial advisors have to, as a minimum (i) base their advice on an assessment of an appropriate range of financial products, (ii) recommend the most cost-efficient financial product from the range of suitable financial products, and (iii) offer at least one financial product without additional features which are not necessary to the achievement of the client's investment objectives and that give rise to additional costs, so that retail investors are presented also with alternative and possibly cheaper options to consider. Insurance undertakings and insurance intermediaries distributing insurance-based investment products must, in addition, ensure that the insurance cover included in the product is consistent with the customer's insurance demands and needs.

The above safeguards to manage conflicts of interest replace the existing safeguards that allow for the payment or receipt of inducements to the extent they enhance the quality of the service under MiFID or do not have a detrimental effect under IDD.

Article 1(13) and 2(21) propose, in Article 24a(8) MiFID and Article 29a(6) IDD, a review clause requiring the European Commission to assess the effects of third-party payments on the retail investor segment 3 years after the transposition of this Directive, in order to determine whether the potential conflicts of interest caused by third-party payments have been reduced.

Amending product oversight and governance rules to ensure that undue costs are not charged and that products deliver Value for Money to retail investors

To strengthen product governance rules and regulate pricing processes, and with a view to limiting the offer of products that bear poor or no 'Value for Money' for retail investors, Article 1(9) introduces a new Article 16-a MiFID and Article 2(16) amends Article 25 IDD. The proposed amendments apply to PRIIPs and to insurance-based investment products, both at the level of the product manufacturer and distributor. Articles 4(1) and 5(1) also strengthen the pricing process that is intended to define and review the cost structure of UCITS and AIFs, by amending Articles 14 and 12 of the UCITS Directive and the AIFMD respectively.

The existing product governance frameworks in Article 16(3) MiFID are transferred and further complemented by new requirements on manufacturers to set out a pricing process allowing for the identification and quantification of all costs and charges, and an assessment of whether such costs and charges do not undermine the value which is expected to be brought by the product (Article 16-a(1) MiFID and Article 25(1) IDD).

In relation to PRIIPs, the pricing process is strengthened to better account for costs and charges, including a requirement not to approve products that deviate from the relevant benchmark, unless the manufacturer is able to establish that costs and charges are justified and proportionate (Article 16-a(1) MiFID, and Article 25(2) IDD). For UCITS, the same effect is achieved through new paragraphs (1a) to (1e) of Article 14, and for AIFMD, through new paragraphs (1a) to (1e) of Article 12. A mandate is given respectively to ESMA and EIOPA to develop, make publicly available and regularly update cost and performance benchmarks against which the manufacturers must compare their products prior to offering them on the market (Article 16-a(9) MiFID and Article 25(8) IDD, Article 14(1f) UCITS and Article 12 (1f) AIFMD).

To facilitate the development of benchmarks, reporting obligations for manufacturers and national competent authorities towards ESMA and EIOPA are introduced, concerning the data on costs, charges and performance of PRIIPs (Article 16-a(2) MiFID and Article 25(4) IDD, Article 20a UCITS and Article 24(2) AIFMD). Receipt of such data by ESMA and EIOPA is a crucial aspect of the Value for Money approach. Without such data, they would not be in a position to develop and refine reliable benchmarks against which Value for Money prospects of investment products can be measured. 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 existing disclosure obligations.

As in the case of product manufacturers, a new requirement is introduced for distributors to quantify distribution costs and perform an overall price assessment against relevant cost and performance benchmarks, taking into account manufacturers' own assessments (Article 16-a(4) MiFID, Article 25(5) IDD).

Article 16-a(5) MiFID also creates reporting obligations for distributors towards NCAs and ESMA as regards the costs of distribution of PRIIPs, including details on the cost of advice and inducements. Article 16-a(6) obliges distributors of PRIIPs manufactured by firms other than investment firms or manufacturers of UCITS or AIF, to report towards NCAs and ESMA data on costs, charges and performance of PRIIPs.

In the case of insurance-based investment products, reporting obligations towards NCAs and EIOPA are centralised at the level of the manufacturer as insurance undertakings typically have full control over the costs charged to the customer, including distribution costs. Distributors of insurance-based investment products are also required to check, as part of their pricing process, whether there are any costs at distribution level that are not taken into

account in the pricing process of the manufacturer. If this is the case, they have to inform the manufacturer immediately so that the costs can be included in the centralised pricing and reporting process at the manufacturer's level.

To ensure effective supervision, Article 16-a(7) MiFID and Article 25(7) IDD introduce a requirement for investment firms, insurance undertakings and insurance intermediaries to maintain records with respect to their assessments, both at the level of the manufacturer and of the distributor.

In the case of MiFID, Article 16-a(8) allows firms that both manufacture and distribute investment products to provide an integrated pricing process.

The pricing process for MiFID-covered products should also cover structured deposits. However, taking into consideration that these are in principle tailor-made products, benchmark development would be too complex an exercise. As a consequence, reporting obligations should not apply in relation to this group of PRIIPs.

Article 16-a(9) MiFID, Article 24 AIFMD, Article 20a UCITS and Article 25(8) IDD empower ESMA and EIOPA to develop and make publicly available benchmarks on the basis of data on costs and the performance of products reported by national competent authorities. The benchmarks, as a tool of comparison, should make the pricing process – at both manufacturing and distribution levels – more objective. A deviation from the relevant benchmark should introduce a presumption that costs and charges are too high, and that the product will not deliver Value for Money, unless it can be demonstrated otherwise. The comparison with benchmarks should be perceived as an additional exercise, which should be undertaken during the pricing process and be based on the relevant benchmark that is available. The fact that the benchmark which would be considered as relevant for the product is not available, does not relieve the manufacturer or distributor of the obligation to demonstrate that costs and charges are justified and proportionate.

Article 16-a(11) and (12) MiFID and article 25(9) and (10) IDD empower the Commission as well as ESMA and EIOPA to initiate the technical groundwork to create the relevant benchmarks. Such groundwork includes a delegated act to be developed by the Commission to determine the methodologies for the development of the benchmarks, as well as criteria which should be covered when justifying and demonstrating proportionality of costs and charges. The groundwork also includes a mandate to ESMA (Article 16-a(12) MiFID) and EIOPA (Article 25(10) IDD) to develop regulatory technical standards to define data sets, data standards and the arrangements of the various reporting obligations.

The newly inserted Article 16-a MiFID contains provisions on product governance, and Article 16a contains updated cross references.

Articles 4(1) and 5(1) amend Article 14 UCITS and Article 12 AIFMD, respectively, to also include new provisions to ensure that costs are not undue. The provisions on undue costs are currently included in Level 2 of the UCITS Directive and the AIFMD, and in ESMA's Level 3 provisions. ESMA has highlighted the lack of convergence in the area of undue costs due to the lack of a clear definition and clear empowerment at Level 1 for Level 2 work. Therefore, the new Articles 14(1a) to (1f) UCITS and 12(1a) to (1f) AIFMD define the conditions for considering that costs are due and provide rules in the pricing process to ensure that these conditions are met.

Ensuring that suitability and appropriateness tests are better adapted to retail investors' needs

In order to clarify and where relevant strengthen the requirements that distributors need to comply with when assessing the suitability of a recommendation or the appropriateness of a financial product for the retail investor, Articles 1(14) and 2(22) amend Article 25 MiFID and Article 30 IDD.

The proposals introduce an obligation for investment firms as well as insurance undertakings and insurance intermediaries distributing insurance-based investment products to explain the purpose of the assessments to clients and customers in a clear and simple way, and to obtain all relevant information from clients and customers which may be necessary and proportionate for the assessments. The proposal clarifies that retail investors need to be informed, via standardised warnings, about the consequences on the quality of the assessment if they do not provide accurate and complete information.

The suitability and appropriateness assessments need to be conducted in good time before the provision of the relevant investment service or before the customer is bound by an insurance contract or offer. A suitability assessment report needs to be provided to clients/customers sufficiently in advance of the conclusion of the transaction to enable clients to seek and receive additional clarifications, where needed.

The need for portfolio diversification will be also added as one of the elements that distributors need to assess when considering the suitability of a specific product or service on the basis of information obtained from the client or customer, including information on any existing portfolios.

To encourage the provision of independent and cheaper advice, the proposal introduces the possibility for independent advisors to provide advice limited to a range of diversified, non-complex and cost-efficient financial instruments. For these products, distributors will be able to perform a suitability assessment on the basis of more limited information about the client and customers. Given that the advice is limited to well-diversified and non-complex products, an assessment of the knowledge and experience of clients, together with their portfolio diversification, will not be required.

To increase the relevance of the appropriateness assessment and strengthen the safeguards protecting retail investors from inappropriate investments, the scope of the client and customer's information that intermediaries need to obtain and assess is expanded to also encompass the capacity to bear full or partial losses and risk tolerance. In case of a negative appropriateness assessment, the intermediary may only proceed with the transaction at the client's explicit request.

Ensuring high professional standards for investment advisors

The revised rules aim to strengthen and align the requirements on the knowledge and competence of investment advisors set out in MiFID II and IDD. Articles 1(13) and 2(5) propose amendments to Article 24d MiFID as well as to Article 10 and Annex 1 IDD.

Article 24d MiFID is amended and specific requirements that are currently stipulated in ESMA Guidelines, together with an additional element regarding sustainable investments, are included in a new Annex V to MiFID. Compliance with the requirements has to be proved by obtaining a certificate. In addition, a minimum requirement for ongoing professional training

is introduced in MiFID, in line with existing requirements under IDD. In IDD, the requirements regarding knowledge and competence set out in Annex I are strengthened and aligned in the same way. Compliance has to be proven by a certificate. Moreover, for IDD, the knowledge requirements extend to all insurance intermediaries and thus covers knowledge in relation to any insurance products being distributed, not just insurance-based investment products.

Client categorisation: easing restrictions for investors to qualify as professional

To ensure more appropriate classification of clients and to reduce administrative burdens, Annex I to this Directive amends Annex II of MiFID, which contains the identification criteria for clients who may be treated as professional on request. The amendments include a reduction of the wealth criterion from EUR 500 000 to EUR 250 000, and the insertion of a possible fourth criterion relating to relevant education or training. The amendments also create the possibility for legal entities to qualify as professional on request by fulfilling certain balance sheet, net turnover and own funds criteria. Under IDD there is no need for such distinction as all insurance-based investment products are considered retail products, so no such amendment is introduced.

Strengthening supervisory enforcement

The package also envisages measures to strengthen supervisory enforcement, in particular in the context of the growth of digital channels and as regards the cross-border provision of services.

Articles 1(17) and 2(6) introduce amendments in Article 69 MiFID and Article 12(3) IDD, respectively, to enable supervisors to use supervisory tools and quickly take action against misleading marketing practices (Article 69(2) point (ka)), restrict access to websites that pose a threat to investor protection (Article 69(2), point (v)) and carry out mystery shopping activities (Article 69(2) point (ca). Article 12(3) IDD introduces a detailed list of powers that national competent authorities must possess for the performance of their duties under this amending Directive. This measure enhances the alignment of IDD with MiFID and will improve supervisory efficiency and coordination, strengthening the protection of customers of insurance products and retail investors. In addition, Articles 1(4) and 2(24) introduce new Article 5a MiFID and Article 35a IDD, respectively, setting requirements for competent authorities to have adequate procedures in place to prevent the offering of unauthorised investment services or activities, including related marketing, and to establish information channels to notify and warn investors of such services or activities, e.g. through warnings lists available on the European supervisory authorities' websites.

To strengthen supervisory enforcement in cross-border cases, the proposal includes the following additions and changes:

– Articles 1(16) and 2(4) insert the new Article 35a MiFID and Article 9a IDD respectively to introduce reporting for investment firms and insurance distributors on their cross-border activities. This will enable national competent authorities as well as ESMA and EIOPA to have a better overview of the scale of cross-border provision of services in the internal market, identify areas that supervision should focus on and where stronger cooperation may be needed, and codify reporting that is already carried out to a large extent at the ESA's initiative.

– Articles 1(21) and 2(7) introduce the new Article 87a MiFID and Article 12b IDD respectively to provide for the establishment of collaboration platforms that facilitate closer collaboration between national competent authorities and the European supervisory authorities to address cross-border issues. They also aim at enhancing the role of ESMA and EIOPA in complex cross-border cases where the supervisory authorities involved fail to reach a common view in a cooperation platform.

– Article 86 MiFID and Articles 5, 8 and 9 IDD already provide for a mechanism that allows host Member States to take precautionary measures in case of harmful behaviour not adequately addressed by the home Member State's competent authority. Article 1(20) of this amending Directive proposes to amend the existing provisions to accelerate and facilitate cooperation between NCAs, by facilitating information exchange and easing the conditions under which a host authority can take action (in case the competent authority of the home Member States does not act or does not act adequately). Competent authorities will also be able to directly refer to the findings drawn by an initiating host competent authority, where similar harmful activities are observed on their territory and are not adequately addressed by the home authority. Article 2(3) provides for similar amendments in Article 5 IDD.

Articles 1(5), 1(6) and 2(2) aim to strengthen supervisory convergence as regards the authorisation of firms, via an amendment to Article 7(3), Article 7(3a) and Article 8 MiFID and Article 3(5) and Article 3(5a) IDD, whereby competent authorities should share information, centralised by ESMA and EIOPA, on the reasons that led them to refuse or withdraw the authorisation from an investment firm or the registration of an insurance intermediary. Similarly, Article 1(11) of this Directive inserts two new paragraphs, Article 21(3) and Article 21(4) MiFID, to clarify that ESMA or any host Member State may request that the competent authority of the home Member State reviews whether a given firm still complies with the conditions for authorisation.

Promotion of financial literacy

To ensure that Member States promote financial education measures at national level so that existing and prospective retail investors are able to invest responsibly, Articles 1(22) and 2(9) respectively insert the new Article 88a MiFID and Article 16a IDD.

2023/0167 (COD)

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

(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[33],

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) Directives (EU) 2009/65/EC[34], 2009/138/EC[35], 2011/61/EU[36], 2014/65/EU[37] and (EU) 2016/97[38] of the European Parliament and of the Council. are designed to protect retail investors

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33 OJ C , , p. .

34 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).

35 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).

36 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).

37 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).

38 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).

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 (EU) 2014/65 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. In light of the potential disruptive impact caused by the introduction of a full prohibition of inducements, it is appropriate to have a staged approach and first strengthen the requirements around the payment and receipt of inducements to address the potential conflicts of interest and ensure better protection of retail investors and, at a second stage, to review the effectiveness of the framework, and propose alternative measures in line with Better Regulation rules, including a potential ban on inducements, if appropriate.

(4) In order to remove any consumer detriment as a consequence of the payment and receipt of inducements for non-advised sales, it is appropriate to prohibit the payment and receipt of such inducements. In the case of Directive (EU) 2014/65, such prohibition would cover the execution or reception and transmission of orders and in the case of Directive (EU) 2016/97, non-advised sales. To avoid restricting issuers' ability to raise funding, that prohibition should not apply to payments in relation to underwriting and placement services provided to an issuer, where the investment firm also provides an execution of order or reception and transmission of order service to an end-investor. Furthermore, investment advice is often combined with the provision of an execution or reception and transmission of order service. In such cases, the main service being investment advice, the prohibition should not apply to the execution or reception and transmission of order service relating to one or more transactions of that client covered by that advice. Minor non-monetary benefits which do not exceed 100 euros or are of a scale and nature that they could not be judged to impair compliance with the duty to act in the best interest of the retail investor should be allowed, to the extent that they are clearly disclosed.

(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 not accept inducements for such advice. 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.

(6) The existing safeguards conditioning the payment or receipt of inducements, which under Directive (EU) 2014/65 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 appropriate to remove those criteria and introduce a new, common test, both in Directive (EU) 2014/65 and Directive (EU) 2016/97, that further clarifies how financial advisors should apply the principle of acting in the best interest of the client. Financial advisors should base their advice on an appropriate range of financial products. After having identified suitable instruments for their clients, they should recommend the most cost-efficient of similar products to their clients. Furthermore, financial advisors should also systematically recommend at least one product without features that may not be necessary for the achievement of the client's investment objective, so that retail investors are presented also with alternative and possibly cheaper options to consider. Such features may include, as an example, funds with an investment strategy which implies higher costs, a capital guarantee and structured products with hedging elements. If advisors choose to also recommend a product that carries additional features which carry extra costs to the client or customer, they should explicitly provide the reason for such a recommendation and disclose the extra costs incurred. In the case of insurance-based investment products, advisors should also ensure that the insurance cover included in the product is consistent with the customer's insurance demands and needs.

(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.

(8) In order to enable the development of independent advice at a reasonable cost, independent advisors should be allowed to provide advice to retail investors on well-diversified, non-complex and cost-efficient products based on a more limited set of data collected for the suitability assessment. The scope of such advice should be clearly disclosed to retail investors in good time before the provision of the advice. Given the diversified nature of the advised products, independent financial advisors should not be required to obtain and assess information from the clients relating to their knowledge and experience or existing portfolios.

(9) In order to assess the effectiveness of these measures, three years after the date of entry into force of this Directive 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 on the effects of third-party payments on retail investments which, where necessary, should be accompanied by proposals to further strengthen the framework.

(10) The level of costs and charges associated with investment and insurance-based investment products can have a significant impact on investment returns, something that may not always be evident for retail investors. To ensure that products offer Value for Money for retail investors, Member States should ensure that firms authorised under Directive (EU) 2014/65 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 in respect of the characteristics, objectives, strategy and expected performance of the product.

(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. 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 develop benchmarks, based on data related to the cost and performance of investment products, which should be taken into consideration by manufacturers and distributors in their pricing processes. If the result of the comparison with a relevant benchmark indicates that the costs and performance for investors are not aligned to the benchmark, the product should not be marketed to retail investors, unless additional testing and further assessments have established that the product nevertheless offers Value for Money to the target market, for example in the case of a product containing additional special features that would be considered relevant for a particular group of investors with identified specific needs and objectives, but which are not reflected in the description of the group of investment products for which the benchmark was developed.

(14) To assist manufacturers and distributors in their assessments, the Commission should be empowered to adopt delegated acts 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 data sets, data standards and methods and formats for the information to be reported.

(16) Certain manufacturers of financial instruments that fall under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 may not be subject to the reporting obligation laid down in art. 16-a(2), or any other equivalent reporting obligation. In such cases, an investment firm that offers or recommends such financial instruments should report to their home competent authorities details of costs and charges and characteristics of these products. The reporting obligations covering the above data, established in UCITSD and AIFMD regulatory package, should be considered equivalent.

(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.

(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 with due skill, care and diligence in the best interests of the investment fund they manage and of their investors. AIFs and UCITS management companies should therefore prevent undue costs from being charged to investment funds and their investors. AIFs and UCITS management companies should be required to establish a sound pricing process which should comprise the identification, analysis and review of costs charged, directly or indirectly, to investment funds or their unit holders, and thus borne by investors. Costs should be considered to be due if they comply with UCITS and AIFs pre-contractual documents, are necessary to their functioning, and are borne by investors in a fair way.

(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 obligation to compensate investors should be added as a possible administrative measure and sanction so that this possibility exists in all Member States.

(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 to the characteristics of the product, and in particular to the investment objective 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 market standards, including by comparing the costs of funds with similar investment strategies and characteristics available on publicly available databases. However, to make the pricing process more objective and to equip UCITS and AIFs management companies, and competent authorities with a tool allowing for an efficient comparison of costs among investment products from the same product type, ESMA should develop benchmarks, based on data related to the cost and performance of investment products that ESMA receives as part of the supervisory reporting, against which an assessment of Value for Money can be carried out, in addition to the other criteria included in the pricing process of UCITS and AIFs management companies. Considering the Commission’s priority to avoid unnecessary administrative burdens and to simplify reporting requirements, those benchmarks should build on existing data from public disclosures and supervisory reporting, unless additional data are exceptionally necessary. Investment funds offering poor Value for Money or deviating from ESMA's benchmarks should not be marketed to retail investors unless further assessment has established that the product nevertheless offers Value for Money. The assessment and the measures taken should be documented and provided to competent authorities upon their request.

(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 are not justified or proportionate to the expected returns of the UCITS and AIFs where available, their level of risk, investment objective and strategy, and for documenting such assessment and measures.

(22) Knowledge and competence of staff are key to ensuring good quality advice. 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. 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 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.

(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 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[39] and Regulation (EU) No 1094/2010 of the European Parliament and of the Council[40], respectively, issue a recommendation to the competent authority of the 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

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39 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).

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

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. Regulatory technical standards should specify and harmonise the content and format of disclosures relating to such costs, associated charges and third-party payments including explanations 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 those financial products. 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 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 adjusted individual 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 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.

(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 a period of five years and, where requested by the competent authority, for a period of up to seven years.

(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 the basis of information provided by those clients or customers on their existing portfolio of financial and non-financial assets.

(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 and their risk tolerance. 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. It is therefore appropriate to require that investment firms, insurance undertakings and insurance intermediaries identify those investment products that are particularly risky 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 products, ESMA and EIOPA should issue guidelines 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.

(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 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 outside the financial services sector and certified training and education that the client has completed. 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;’;

(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.

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.’;

(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. 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.’;

(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:

‘3a. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to

ensure that marketing communications and practices comply with the obligations set out in Article 24c.';

(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, as referred to in Article 75, are dealt with properly. Those procedures shall allow investors to register complaints in any language in which communication material or services were provided or in the language as agreed between the firm and its clients prior to entering into any transaction.

In all cases, complaints shall be registered and complainants shall receive replies within 40 working days.';

(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*, a clear identification and quantification of all costs and charges related to the financial instrument and an assessment of whether those costs and charges are justified and proportionate, having regard to the characteristics, objectives and, if relevant, strategy of the financial instrument, and its performance ('pricing process').

The pricing process referred to in point (e) shall include a comparison with the relevant benchmark, where available, on costs and performance published by ESMA in accordance with paragraph 9.

When a financial instrument deviates from the relevant benchmark referred to in paragraph 9, the investment firm shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and

proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be approved by the investment firm.

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 of the financial instrument.

2. An investment firm which manufactures financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities the following:

    (a) details of costs and charges of the financial instrument, including any distribution costs that are incorporated into costs of financial instrument, including third-party payments;

    (b) data on the characteristics of the financial instrument, in particular its performance and the level of risk.

    The competent authorities shall transmit data referred to in point (a) and (b) to ESMA without undue delay.

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 shall regularly review financial instruments it offers or recommends, 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 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 ensure the following:

    (a) identify and quantify the costs of distribution and any further costs and charges not already taken into account by the manufacturer;

    (b) assess whether the total costs and charges are justified and proportionate, having regard to the target market's objectives and needs (pricing process).

    The pricing process, as referred to in points (a) and (b), shall include a comparison with the relevant benchmark, when available, on costs and performance published by ESMA in accordance with paragraph 9.

    When a financial instrument, together with costs of services incurred by the client in order to purchase that instrument, deviates from the relevant benchmark referred to in paragraph 9, the investment firm which offers or recommends a financial instrument shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be offered or recommended by the investment firm.

5. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 shall report to its home competent authorities details of the costs of distribution, including any costs related to the provision of advice or any connected third-party payments.

   The competent authorities shall transmit such details of costs of distribution to ESMA without undue delay.

6. An investment firm which offers or recommends financial instruments falling under the definition of packaged retail products in accordance with Article 4(1) of Regulation (EU) No 1286/2014, manufactured by a manufacturer that is not subject to the reporting obligation laid down in paragraph 2 or any other equivalent reporting obligation, shall report to their home competent authorities the following:

   (a) details of costs and charges of any financial instrument destined for retail investors, including any distribution costs that are incorporated into costs of financial instrument, including third-party payments;

   (b) data on the characteristics of the financial instruments, in particular its performance and the level of risk.

   The competent authorities shall transmit such data without undue delay to ESMA.

7. An investment firm shall document all assessments made and shall, upon request, provide such assessments to a relevant competent authority, including the following:

   (a) where relevant, the results of the comparison of the financial instrument to the relevant benchmark;

   (b) where applicable, the reasons justifying a deviation from the benchmark;

   (c) the justification and demonstration of the proportionality of costs and charges of the financial instrument.

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.

9. After having consulted EIOPA and the competent authorities, ESMA shall, where appropriate, develop and make publicly available common benchmarks for financial instruments that present similar levels of performance, risk, strategy, objectives, or other characteristics, to help investment firms to perform the comparative assessment of the cost and performance of financial instruments, falling under the definition of packaged retail investment products, both at the manufacturing and distribution stages.

   The benchmarks shall display a range of costs and performance, in order to facilitate identification of financial instruments whose costs and performance depart significantly from the average.

   The costs used for the development of benchmarks for investment firms manufacturing financial instruments shall, in addition to the total product cost, allow comparison to individual cost components. The costs used for the development of benchmarks for distributors shall, in addition to the total cost of the product, refer to the distribution cost.

   ESMA shall regularly update the benchmarks.

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. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article 89 to specify the following:

    (a) the methodology used by ESMA to develop benchmarks referred to in paragraph 9;

    (b) the criteria to determine whether costs and charges are justified and proportionate.

12. ESMA, after having consulted EIOPA and the competent authorities and taking into consideration the methodology referred to in paragraph 11, point (a), shall develop draft regulatory technical standards specifying the following:

    (a) the content and type of data and details of costs and charges to be reported to the competent authorities in accordance with paragraph 2, 5 and 6, based on disclosure and reporting obligations, unless additional data is exceptionally necessary;

    (b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance paragraph 2, 5 and 6.

ESMA shall submit those draft regulatory technical standards to the Commission by [18 months] after adoption of the delegated act referred to in paragraph 11.

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

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* Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (OJ L 352, 9.12.2014, p. 1).';

(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 the obligation of the following:

(a) to provide advice on the basis of an assessment of an appropriate range of financial instruments;

(b) to recommend the most cost-efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering similar features;

(c) to recommend, among the range of financial instruments identified as suitable to the client pursuant to Article 25(2), a product or products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs.';

(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 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 authority 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, and update periodically, guidelines 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.

The guidelines 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.’

‘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 financial instruments.

ESMA shall, by [18 months after the entry into force of the amending Directive], develop, and update periodically, guidelines on the concept of particularly risky financial instruments taking due account of the specificities of the different types of instruments.

ESMA shall develop draft 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 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 third subparagraph 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.’;

(h) the following paragraph 7a is inserted:

‘7a. When providing investment advice to retail clients on an independent basis, the investment firm may limit the assessment in relation to the type of financial instruments mentioned in paragraph 7, point (a), to well-diversified, cost-efficient and non-complex financial instruments as referred to in Article 25(4)(a). Before accepting such service, the retail client shall be duly informed about the possibility

and conditions to get access to standard independent investment advice and the associated benefits and constraints.';

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

(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, Article 24a and Article 24b 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, notably those receiving inducement, 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 pay or receive any fee or commission, or provide or are provided with any non-monetary benefit, in connection with the provision of such service, to or by any party except the client or a person on behalf of the client.

2. Member States shall ensure that investment firms, when providing reception and transmission of orders or execution of orders to or on behalf of retail clients, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of such services, to or from any third-party responsible for the creation, development, issuance or design of any financial instrument on which the firm provides such execution or reception and transmission services, or any person acting on behalf of that third-party.

3. Paragraph 2 shall not apply to investment firms, when providing investment advice on a non-independent basis relating to one or more transactions of that client covered by that advice.

4. Paragraph 2 shall not apply to fees or any other remuneration received from or paid to an issuer by an investment firm performing for that issuer one of the services referred to in Annex I, Section A, points 6 and 7, where the investment firm also provides to retail clients any of the investment services referred to in paragraph 2 and relating to the financial instruments subject to the placing or underwriting services.

   This paragraph shall not apply to financial instruments that are packaged retail investment products as referred to Article 4, point (1), of Regulation (EU) No 1286/2014.

5. Paragraphs 1 and 2 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. Member States shall ensure that the provision of research by third parties to investment firms 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) before the execution or research services have been provided, an agreement has been entered into between the investment firm and the research provider, identifying the part of any combined charges or joint payments for execution services and research that is attributable to research;

   (b) the investment firm informs its clients about the joint payments for execution services and research made to the third-party providers of research; and

   (c) the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 10 billion, as expressed by end-year quotes for the years when they are or were listed or by the own-capital for the financial years when they are or were not listed.

   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.

8. Three years after the date of entry into force of Directive (EU) [OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the effects of third-party payments on retail investors, in particular in view of potential conflicts of interest and as regards the availability of independent advice, and shall evaluate the impact of the relevant provisions of Directive (EU) [OP Please introduce the number of the amending Directive] on it. If necessary to prevent

consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.

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.

   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, 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) 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 client to understand the overall cost, of the financial instruments and the cumulative effect on return of the investment. Member States shall ensure that investment firms express the overall cost in monetary terms and percentages calculated up to the maturity date of the financial instrument or for financial instruments without a maturity date, the holding period recommended by the investment firm, or in the absence thereof, holding periods of 1, 3 and 5 years. Where the client so requests, investment firms shall provide an itemised breakdown.

   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 an average retail client.

   Where the amount of any costs, associated charges or 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 client in a manner that is comprehensible, accurate and understandable for an average retail client.

Investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, with such clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.

Investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.

2. After having conducted consumer and industry testing and after having consulted EIOPA, ESMA shall 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 conclusion of any transaction on financial instruments;

   (b) the standard terminology and 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 client or potential 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 client or potential client. Explanations related to those costs, associated charges and third-party payments and their impact on the expected returns, shall ensure that they are likely to be understood by any average retail client without specific knowledge on investments in 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 and charges, the investment firm may provide the information on costs and charges 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, including any stamp duty, transactions tax, withholding tax and any other taxes where levied by the investment firm, 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 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).

Upon its request, the retail client shall be entitled to receive each year a detailed breakdown of the information referred to under point (a) to (c) above per financial instrument owned during the relevant period as well as for each tax borne by the retail client.

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 as described under paragraph 2 of this Article.

5. The annual statement referred to in paragraph 4 shall not be provided where 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 audience 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 presentation of the essential characteristics of the financial instruments and services included 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 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.

4. Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by the 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 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.

5. Member States shall ensure, 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 or marketing practice that do not comply with requirements under 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 kept for a period of five years and, where requested by the competent authority, for a period of up to seven years. 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 the following:

(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 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. 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.

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, that client’s financial situation, including 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 and need for portfolio diversification.

When providing independent investment advice to retail clients restricted to well-diversified, non-complex, and cost-efficient financial instruments, the independent firm shall be under no obligation to obtain information on the retail client or potential retail client's knowledge and experience about the considered financial instruments or investment services or on the retail client's existing portfolio composition.

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 client or potential 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, and for the retail client or potential retail client, the capacity to bear full or partial losses and risks tolerance 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. That 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 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 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.';

(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 with the exception of paragraphs 5, 5a and 5c thereof, Article 24a, Article 24b, with the exception of paragraph 1, 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 investment services 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 host Member State through the freedom to provide investment services and activities and ancillary services;

   (c) for each host 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 host Member State;

   (e) the type of marketing communications used in host 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 (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, related to particularly risky financial instruments where those instruments could pose a serious threat to investor protection.';

(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.';

(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, in accordance with Article 16 of Regulation (EU) No 1095/2010, issue a recommendation to shall invite the competent authority of the home Member State to consider the concerns of other competent authorities concerned and to launch a joint on-site inspection together with other competent authorities concerned.';

(22) the following Title VIa is inserted:

'TITLE VIA

FINANCIAL EDUCATION

Article 88a

Financial education of retail clients and prospective retail clients

Member States shall promote measures that support the education of retail clients and prospective retail clients in relation to responsible investment when accessing investment services or ancillary services.

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.';

(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) 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;

(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.';

(26) Article 3 is amended as follows:

(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.’;

(27) 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.

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 2in 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.';

(28) 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 insurance distribution activities 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 host Member State;

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

(d) for each host 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 host 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.';

(29) 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.

(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, 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.

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.

(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 1 250 000 applying to each claim and in aggregate EUR 1 850 000 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;';

(30) 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;

(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 in information materials, including marketing communications, related to particularly risky insurance-based investment products and, where applicable, underlying investment assets, where those products and assets could pose a serious threat to investor protection.';

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.';

(31) 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 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, in accordance with Article 16 of Regulation (EU) No 1094/2010, issue a recommendation to the competent authority of the home Member State to consider the concerns of other competent authorities concerned and to launch a joint on-site inspection together with other competent authorities concerned.';

(32) 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.';

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

'Article 16a

Financial education of customers

Member States shall promote measures that support the education of customers in relation to the responsible purchase of insurance products when accessing insurance services or ancillary services.

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.';

(34) 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.';

(35) 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.';

(36) 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.';

(37) 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, 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, 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].;

(38) 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*.'

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*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).';

(39) 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, 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.';

(40) 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, a clear identification and quantification of all costs and charges related to the product and an assessment of whether these costs and charges are justified and proportionate, having regard to the characteristics, objectives, strategy and performance of the product, as well as the guarantees and insurance coverage of biometric and other risks (pricing process);

(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.

The pricing process referred to in point (f) shall contain a comparison with the relevant benchmark, where available, on costs and performance published by EIOPA in accordance with paragraph 8.

2. When an insurance-based investment product which deviates from the relevant benchmark referred to in paragraph 8, the manufacturer shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the insurance-based investment product shall not be approved by the manufacturer. Where no relevant benchmark exists for an insurance-based investment product, a manufacturer shall approve the product only if it has established through product testing and assessments that the costs and charges are justified and proportionate and that the product meets the target market's objectives and needs.

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 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.

4. Insurance undertakings and insurance intermediaries which manufacture insurance-based investment products shall report to their home authorities all of the following:

   (a) complete and accurate details of costs and charges of the insurance-based investment product, including distribution costs incorporated into the costs of the product, inclusive of third-party payments;

   (b) data on the characteristics of the insurance-based investment product, in particular its performance and level of risk.

   The competent authorities shall transmit the data referred to in the first subparagraph data to EIOPA without undue delay.

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.

   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;

   (c) assess whether the total costs and charges are justified and proportionate, having regard to the target market's objectives and needs (pricing process).

   The pricing process referred to in point (c) shall include, where available, a comparison with the relevant benchmark on costs and performance published by EIOPA in accordance with paragraph 8.

   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.

6. When an insurance-based investment product deviates from the relevant benchmark referred to in paragraph 8, the insurance intermediary or insurance undertaking distributing insurance-based investment products shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the insurance intermediary or insurance undertaking shall not advise on or propose the insurance-based investment product to retail customers. Where no relevant benchmark exists for an insurance-based investment product, distributors shall only advise on or propose the product, if they have established through product testing and assessments that the costs and charges are justified and proportionate and that the product meets the target market's objectives and needs.

7. An insurance intermediary or insurance undertaking which manufactures or distributes insurance-based investment products shall document all assessments made, including the following:

   (a) where relevant, the results of the comparison of the insurance-based investment product to the relevant benchmarks,

   (b) where applicable, the reasons justifying a deviation from the benchmark

   (c) justification and demonstration of the proportionality of costs and charges of the insurance-based investment product.

8. EIOPA, after having consulted ESMA and the competent authorities, shall, where appropriate, develop and make publicly available common benchmarks for insurance-based investment products that present similar levels of performance, risk, strategy, objectives, or other characteristics to help insurance undertakings and insurance intermediaries manufacturing or distributing insurance-based investment products to perform the comparative assessment of the cost and performance of insurance-based investment products.

   The benchmarks shall display a range of costs and performance, in order to facilitate the identification of insurance-based investment products whose costs and performance depart significantly from the average.

   The costs used for the development of benchmarks shall, in addition to the total product cost, also include all costs of distribution, inclusive inducements. They shall allow comparison with individual cost components.

   EIOPA shall regularly update those benchmarks.

9. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify the principles set out in this Article, including, with regard to insurance-based investment products,

   (a) the methodology to be used by EIOPA to develop the benchmarks referred to in paragraph 8;

   (b) the criteria to determine whether costs and charges are justified and proportionate;

   Those delegated acts shall take into account in a proportionate way the activities performed, the nature of the insurance products sold and the nature of the distributor.

10. EIOPA, after having consulted ESMA and the competent authorities and after industry testing, and taking into consideration the methodology referred to in paragraph 9, point (a), shall develop draft regulatory technical standards to determine the following:

    (a) content and type of data to be reported to the home authorities in accordance with paragraph 4, based on disclosure and reporting obligations, unless additional data is exceptionally necessary;

    (b) the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported in accordance with paragraph 4.

    EIOPA shall submit those draft regulatory technical standards to the Commission by [9 months after the adoption of the delegated act referred to in paragraph 2].

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

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.';

(41) 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.';

(42) 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 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.

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 that 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.

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 or marketing practice 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, or their marketing communications made by any third party remunerated or incentivised through non-monetary compensation.

   Such records shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years. 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 and risks, and appropriate in terms of content and distribution channels for the target audience or, where applicable, the target market.';

(43) 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.';

(44) 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 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 assets, 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;

(v) how the recommended insurance-based investment products take into account the diversification of the customer's portfolio;

(b) a description of the main features of the proposed insurance-based investment product and, where applicable, any recommended underlying investment assets and investment strategies, including appropriate guidance on, and warnings of, the risks associated with the insurance-based investment product~~s~~ and, where applicable, the recommended underlying investment assets 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 an average 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. Where the customer so requests, insurance intermediaries and insurance undertakings shall provide an itemised breakdown of that information.

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 assets 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 assets 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) adjusted individual 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.

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.

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

(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 Union standardised terminology and related explanations to be used for the provision 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 conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the third subparagraph 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 insurance-based investment products and, where applicable, underlying investment assets.

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 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.

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.

EIOPA 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, EIOPA, after having consulted the competent authorities concerned, may impose the use of

risk warnings by insurance intermediaries and insurance undertakings distributing insurance-based investment products.';

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

'Article 29a

Inducements

1. Member States shall ensure that insurance intermediaries or insurance undertakings that manufacture insurance-based investment products or distribute such products in accordance with Article 30(2) and (3) do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit with regard to the provision or distribution of an insurance based investment product, to or by any party except the customer or a person on behalf of the customer.

   The prohibition contained in the first sub-paragraph shall not apply to minor non-monetary benefits of a total value below EUR 100 per annum or of a scale and nature such that those benefits do not impair compliance with the insurance intermediary's or insurance undertaking's duty to act in the best interests of their customer provided those benefits have been clearly disclosed to the customer.

   Any payment or benefit which enables or is necessary for the provision of services, including regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of their customers, shall not be subject to the requirements set out in the first subparagraph.

2. Member States shall ensure that insurance intermediaries or insurance undertakings, 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 additionally prohibit or further 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.

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.

6. Three years after the date of entry into force of Directive (EU) [OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the effects of third-party payments on retail investors, in particular in view of potential conflicts of interest and as regards the availability of independent advice, and shall evaluate the impact of the relevant provisions of Directive (EU) [OP Please introduce the number of the amending Directive] on retail investors. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.

Article 29b

Best interest of customers

1. Member States shall ensure that in order to act in the best interest of the customer in accordance with Article 17(1), when providing advice to customers on insurance-based investment products, insurance undertakings and insurance intermediaries are under the obligation:

   (a) to provide such advice on the basis of an assessment of an appropriate range of insurance-based investment products and, where applicable, underlying investment assets;

   (b) to recommend the most cost-efficient insurance-based investment product and, where applicable, underlying investment assets among the insurance-based investment products identified as suitable for the customer pursuant to Article 30(1) and offering similar features;

   (c) to recommend, among the range of insurance-based investment products identified as suitable for the customer pursuant to Article 30(1), one or several insurance-based investment products and, where applicable, underlying investment assets, a product or products, without additional features that are not necessary to the achievement of the customer's objectives and that give rise to extra costs;

   (d) to recommend an insurance-based investment products which insurance cover is consistent with the customer's insurance demands and needs.

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 being offered or considered, including different types of insurance-based investment products.';

(46) 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 assets 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 assets, offered or demanded, that customer's financial situation, including the composition of any existing portfolios, 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, are in accordance with its risk tolerance, ability to bear losses and need for portfolio diversification.

When providing advice on an independent basis to retail customers restricted to well-diversified, non-complex, and cost-efficient insurance-based investment products, the insurance intermediary or insurance undertaking shall be under no obligation to obtain information on the customer's knowledge and experience about the considered insurance-based investment products or on the customer's portfolio composition.

When providing advice that involves switching between underlying investment assets, insurance intermediaries and insurance undertakings shall obtain the necessary information on the customer's existing underlying investment assets and the recommended new investment assets 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 no advice is given in relation to insurance-based investment products, 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 and the person's capacity to bear full or partial losses and risk tolerance 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 paragraphs 5a, 5b and 5c are 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.

5b. 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 shall not be limited to insurance products issued or provided by entities having close links with the insurance intermediary or insurance undertaking;

(b) 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.

5c. When providing investment advice to retail customers on an independent basis, the insurance intermediary or insurance undertaking may limit the assessment in relation to the type of insurance-based investment products mentioned in paragraph 5b, point (a), to well-diversified, cost-efficient and non-complex insurance-based investment products. Before accepting such service, the retail customer shall be duly informed about the possibility and conditions to get access to standard independent advice and the associated benefits and constraints.';

(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.

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.';

(47) 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;

(48) 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.
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.’;

(49) 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.’;

(50) Article 39 is amended as follows:

(a) the 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.’;

(51) 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’;

(52) the following text is deleted:

‘Subsection 1

Non-life insurance’;

(53) Articles 183 and 184 are deleted;

(54) the following text is deleted:

‘Subsection 1

Life insurance’;

(55) 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 are in line with disclosures in the prospectus referred to in Article 69 and the key investor information referred to in Article 78;

(b) The costs are necessary for the UCITS to operate in line with its investment strategy and objective or to fulfil 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, having regard to the characteristics of the UCITS, including its investment objective, 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, including a comparison to market standards.

1d. Member States shall require management companies to assess at least annually whether undue costs have been charged to the UCITS or its unit-holders.

Member States shall require management companies to reimburse investors where undue costs have been charged to 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 and include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.

When a UCITS or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the management company shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated or if the UCITS or its share classes do not comply with other criteria set out by the management company in the pricing process that UCITS or its share classes shall not be marketed to retail investors by the management company.

1f. After consulting EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of UCITS, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e.

Common benchmarks shall be developed, where it is feasible to do so, for UCITS, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.

These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. These benchmarks shall be updated on a regular basis.';

(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.;

(e) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b), and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.’;

(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.’;

(56) 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.’;

(57) 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).'

(58) in Article 90, the following paragraph is added:

'This Article applies without prejudice to the application of Article 14.';

(59) in Article 98(2), the following point (n) is added:

'(n) require compensation to investors where undue costs have been charged to UCITS or its unit-holders.';

(60) in Article 99(6), the following point is added:

'(h) requirement to compensate investors where undue costs have been charged to UCITS or its unit-holders.';

(61) 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) The costs are in line with disclosures 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) The costs are necessary for the AIF to operate in line with its investment strategy and objective or to fulfil regulatory requirements;

(c) The costs 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, having regard to the characteristics of the AIF, including its investment objective, 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, including a comparison to market standards.

1d. Member States shall require AIFMs to assess at least annually whether undue costs have been charged to AIF or its unit holders.

Member States shall require AIFMs to reimburse investors where undue costs have been charged to the or its AIF 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 and, for AIFs marketed to retail investors, include a comparison with the relevant benchmark on costs and performance published by ESMA in accordance with paragraph 1f.

When an AIF or its share classes, when they have different cost structures, deviate from the relevant benchmark referred to in paragraph 1f, the AIFM shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, or if the AIF or its share classes do not comply with other criteria set out by the AIFM in the pricing process, that AIF or its share class shall not be marketed to retail investors by the AIFM.

1f. After having consulted EIOPA and competent authorities, ESMA shall, where appropriate, develop and make publicly available benchmarks to enable the comparative assessment of costs and performance of AIFs, or their share classes where they have different cost structures, to be used for the assessment set out in paragraph 1e.

Common benchmarks shall be developed, where it is feasible to do so, for AIFs, or their share classes where they have different cost structures, marketed to retail investors that present similar levels of performance, risk, strategy, objectives, or other characteristics.

These benchmarks shall display a range of costs and performance, especially cases where costs and performance depart significantly from the average. The benchmarks shall be updated on a regular basis.';

(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.

(b) provide for criteria to determine whether costs are justified and proportionate in accordance with paragraph 1b, point (b) and for taking corrective measures mentioned in paragraph 1e and specify the methodology used by ESMA to develop its benchmarks.';

(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.';

(62) 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.’;

(63) in Article 46(2), the following point (n) is added:

‘(n) require to compensate investors where undue costs have been charged to the AIF or its unit-holders.’.

(64) 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 date of entry into force of this Directive].
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	*For the Council*
The President	*The President*

Legislative Financial Statement – Retail Investment Strategy

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal relates to

1.4. Objective(s)

1.4.1. General objective(s)

1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

1.5.5. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

1.7. Method(s) of budget implementation planned

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1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Package of measures aimed at implementing the retail investment strategy

1.2. Policy area(s) concerned

Policy area: Internal Market

Activity: Financial markets

1.3. The proposal relates to

☐ **a new action**

☐ **a new action following a pilot project/preparatory action**[41]

☑ **the extension of an existing action**

☐ **a merger of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

The general objectives of the initiative are to strengthen the protection framework for retail investors to empower them when taking investment decisions and to ensure their fair treatment when using investment services in order to achieve better investment performance. The retail investment strategy also aims to improve the efficiency and integration of the internal market across all retail financial services.

1.4.2. Specific objective(s)

The specific objectives of this initiative are as follows:

Improving information provided to investors and their ability to take well-informed investment decisions. The initiative aims to improve the legal framework by adapting disclosures to the digital environment, making disclosures more relevant for retail investors and ensuring retail investors receive marketing communications, also through online channels, that are relevant and not misleading.

Better aligning interests between intermediaries and investors. The improvements to the framework would ensure that the advice given to retail investors is not biased by monetary or non-monetary incentives provided by product manufacturers to intermediaries, is of good quality and adapted to their needs, preferences and objectives.

Ensuring that retail investors are offered cost-effective products. A strengthened approach in the legislative framework based around the value offered aims to help retail investors achieve better returns and easier access to more cost-efficient retail investment products.

[41] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposals are expected to bring greater coherence to the legislative framework whilst reinforcing investor protection rules. They should achieve this by taking a holistic approach, looking across the different legislative instruments and seeking to address identified problems through a variety of measures. In particular, the proposals address how disclosures are made to retail investors and the rules on marketing communications in an increasingly digital environment, managing potential conflicts of interest that arise as a consequence of the payment of inducements and ensuring that value for money is appropriately reflected in existing product approval processes. The legislative package features a number of additional measures aimed at enhancing financial literacy, making it easier for more experienced investors to be classified as professional investors, strengthening the rules around suitability and appropriateness assessments, raising standards around the professional qualification of advisors as well as a number of measures designed to improve supervisory enforcement.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

Non-exhaustive list of potential indicators:

● ESMA and EIOPA will be tasked with monitoring the effectiveness of digital disclosures.

● Change in number of complaints regarding quality/lack of information

● Evaluation of role of disclosure to take well-informed investment decisions

● Number of risk warnings regarding (aggressive) marketing

● Evaluation of investor's ability to discern essential product information from new marketing disclosure format

● Emerging marketing-related trends and risks

● Distribution of retail investment products per investment type

● Change in total number of complaints regarding investment advice, portfolio management and execution of orders

● Change in number of complaints according to firm type

● Distribution of costs and performance per investment type

● in cost of value-for-money related benchmarks

● Change in number of complaints regarding fees and charges

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

These proposals should address the following challenges:

1. Retail investors lack relevant, comparable and easily understandable investment product information, while being inappropriately influenced by marketing communications.

Relevant, comparable and easily understandable information about investment products is important to help retail investors make well-informed decisions. That purpose is however is hindered by several factors that limit the ability of investors to use and understand the information they need – some related to deficiencies in the retail disclosure framework, others related to insufficient levels of financial literacy. The information documents provided to retail investors are rarely engaging and their layout is frequently very dense and not reader friendly. Insufficient levels of financial literacy make it harder for investors to find and assess available information and reflect it in their investment decisions.

Current disclosure rules are not sufficiently helping consumers overcome the underlying complexity of retail investment products. As a consequence, there is further potential for disclosures to better help retail investors make their decisions.

Retail investors are increasingly exposed to the influence of social media and online marketing. The current framework has not been sufficiently adapted to the increasing use of digital channels for retail investing. In addition, the current framework does not reflect the growing need of inclusion of sustainability preferences of retail investors.

2. Shortcomings in the investment product manufacturing and distribution process related to the payment of inducements and the extent to which product design reflects cost-efficiency and value for the retail investor.

Some products offered and recommended to retail investors do not deliver satisfactory investment results and do not best serve their interests, nor correspond to their investment objectives, needs and preferences. Both EIOPA and ESMA have found that certain products offered to retail investors (e.g. certain structured investment products or insurance-based investment products) have in recent years offered very low if not negative returns, especially after deduction of fees .

Particularly costly are products that include the payment of inducements for financial intermediaries in the distribution process. Despite the existing safeguards to mitigate the resulting conflicts of interest, investors are still advised products that do not offer them the best value nor help them to achieve their long-term investment goals.

Jointly, these problems have the following consequences:

1. Investors may not be duly protected or treated fairly;

2. Some investors do not achieve good outcomes on their investment due to poor quality products, making it harder to accumulate capital to finance their retirement needs or other life goals;

3. As retail investors achieve suboptimal results and do not understand why their financial products did not yield a satisfying performance, their confidence in capital markets may be undermined and their willingness to invest in the first place discouraged;

4. The resulting lower retail investor engagement may constrain efforts to achieve a more efficient, developed and integrated capital market within the EU.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this

point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

The legal framework governing retail investor protection is extensive and largely harmonised at EU level. Notwithstanding this extensive body of legislation at EU level, the evidence gathering exercises have identified a number of significant shortcomings, in particular with respect to the way retail investment products are distributed and the way information is provided to retail investors. Action is required at EU level as the options considered in this impact assessment necessitate the modification of the existing legal framework, consisting of EU Directives and Regulations. Individual initiatives at Member State level are therefore not suitable, insofar as the proposed amendments will be made to EU Directives and Regulations and consequently beyond the scope of the legislative competence of Member States.

Expected generated Union added value (ex-post)

Ensuring a coherent investor protection framework that empowers consumers to take financial decisions and benefit from the internal market can only be achieved at EU level, in close cooperation with Member States.

As the current retail investor protection framework largely consists of different EU legal instruments, in order to address the problems identified in this impact assessment and to facilitate cross-border retail investor participation in the EU, this framework may only be amended at EU level to update investor protection rules. Acting at the EU level and harmonising the operational requirements of service providers as well as the disclosure requirements imposed reduces the complexity and administrative burdens for stakeholders and promotes financial stability.

1.5.3. Lessons learned from similar experiences in the past

The evaluation and impact assessment accompanying the legislative proposal have assessed how the existing framework has performed and identify a number of shortcomings, in particular with respect to the way some products incorporate high costs by design, and the lack of salience of the disclosure documents that are provided to retail investors. Behavioural testing by EIOPA prior to finalisation of the design of the PEPP key information document has proven beneficial, and similar approaches would be appropriate when ESMA and EIOPA implement the changes to disclosure rules that form part of this legislative package.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The objectives of the initiative are consistent with a number of other EU policies and ongoing initiatives, in particular with the Union policies aimed at creating a Capital Markets Union (CMU). In its September 2020 New Capital Markets Union Action Plan, the European Commission announced its intention to come forward with a strategy for retail investments in Europe that seeks to ensure that retail investors can take full advantage of capital markets and that rules are coherent across legal instruments.

The legislative proposal would have a very limited impact on the MFF, as it foresees additional Union contribution to ESMA and EIOPA stemming from the additional 16 FTEs (7

Temporary Agents and 9 Contract Agents) that the Authorities would receive to implement the additional tasks conferred by the legislators.

This will translate into a proposal to increase the authorised staff of the agency during the future annual budgetary procedure. The agencies will continue to work towards maximising synergies and efficiency gains (inter alia via IT systems), and closely monitor the additional workload associated with this proposal, which would be reflected in the level of authorised staff requested by the agency in the annual budgetary procedure.

1.5.5. Assessment of the different available financing options, including scope for redeployment

Both ESMA and EIOPA were asked whether fees levied on firms might be an alternative way to cover the costs of various initiatives. They concluded that such an approach would be difficult to justify, as the considered measures are not directly linked to supervisory powers, but part of developing the regulatory framework.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

☑ **unlimited duration**

– Implementation with a start-up period from 2025 to 2027,

– followed by full-scale operation.

1.7. Method(s) of budget implementation planned[42]

☐ **Direct management** by the Commission through

– ☐ executive agencies

☐ **Shared management** with the Member States

☑ **Indirect management** by entrusting budget implementation tasks to:

☐ international organisations and their agencies (to be specified);

☐the EIB and the European Investment Fund;

☑ bodies referred to in Articles 70 and 71;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

[42] Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

In line with already existing arrangements, the ESAs prepare regular reports on their activity (including internal reporting to Senior Management, reporting to Boards and the production of the annual report), and are subject to audits by the Court of Auditors and the Commission's Internal Audit Service on their use of resources and performance. Monitoring and reporting of the actions included in the proposal will comply with the already existing requirements, as well as with any new requirements resulting from this proposal.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

The tasks will be implemented by EIOPA's and ESMA's indirect management with funding provided through the Union subsidy to the authorities and from the contributions of the National Competent Authorities (NCAs) in accordance with the normal funding formula (40% Union, and 60% Member State NCAs plus the contribution of EFTA NCAs and the NCA share of employer's pension contributions). In accordance with Article 30 of their Financial Regulations, EIOPA and ESMA are to implement their budgets in compliance with effective and efficient internal control, which should be based upon best international practices and on the Internal Control Framework laid down by the Commission for its own departments. In accordance with Article 70.5 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (the Financial Regulation), the Internal Auditor of the Commission is also the Internal Auditor of EIOPA and ESMA. In particular, in accordance with Article 78.3 of the Financial Regulations of EIOPA and ESMA, the Commission's Internal Auditor (i.e. the Internal Audit Service) is responsible for: (a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them;

(b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each operation for implementation of the budget of the Union body.

These responsibilities of the Internal Audit Service will also extend to the tasks implemented by EIOPA and ESMA in accordance with the proposed legislation.

As well as the work of the Internal Audit Service, EIOPA and ESMA are subject to external audit including by the European Court of Auditors, which in accordance with Article 104 of the Financial Regulations of EIOPA and ESMA, shall each year prepare specific annual reports on EIOPA and ESMA in line with the requirements of Article 287(1) of the Treaty on the Functioning of the European Union. 2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Management and control systems are provided in the Regulations currently governing the functioning of the ESAs. These bodies work closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are observed in all areas of the internal control framework. Every year, the European Parliament, following a recommendation from the Council, grants discharge to each ESA for the implementation of their budget.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

Management and control systems as provided for in the ESAs Regulations are already implemented and deemed to be cost effective. The Regulation is regularly reviewed and the risks of error are expected to be low.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

For the purpose of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EU, Euratom) N°883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) apply to the ESAs without any restriction. The ESAs have a dedicated anti-fraud strategy and resulting action plan. The ESAs' actions in the area of anti-fraud will be compliant with the Financial Regulation, OLAF's fraud prevention policies, the provisions provided by the Commission Anti-Fraud Strategy (COM(2019)196) as well as the Common Approach on EU decentralised agencies (July 2012) and the related roadmap. In addition, the Regulations establishing the ESAs as well as the ESAs' Financial Regulations set out the provisions on implementation and control of the ESAs' budgets and applicable financial rules, including those aimed at preventing fraud and irregularities.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[43]	from EFTA countries [44]	from candidate countries[45]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1	EIOPA: <03.10.03>	Diff.	NO	NO	NO	NO
1	ESMA: <03.10.04>	Diff.	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation

[43] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[44] EFTA: European Free Trade Association.
[45] Candidate countries and, where applicable, potential candidates from the Western Balkans.

	N/A					

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	Heading 1 : Single Market, Innovation & Digital

EIOPA: <03.10.03>			**2023**	**2024**	**2025**	**2026**	**2027**	**TOTAL**
Title 1:	Commitments	(1)			0.042	0.085	0.117	**0.244**
	Payments	(2)			0.042	0.085	0.117	**0.244**
Title 2:	Commitments	(1a)			0.013	0.026	0.033	**0.072**
	Payments	(2a)			0.013	0.026	0.033	**0.072**
Title 3:	Commitments	(3a)			0.324	0.120	0.060	**0.504**
	Payments	(3b)			0.324	0.120	0.060	**0.504**
TOTAL appropriations for EIOPA <30.10.03>	Commitments	=1+1a +3a			**0.379**	**0.231**	**0.210**	**0.820**
	Payments	=2+2a +3b			**0.379**	**0.231**	**0.210**	**0.820**

ESMA: <03.10.04>			2023	2024	2025	2026	2027	TOTAL
Title 1:	Commitments	(1)			0.098	0.198	0.202	**0.498**
	Payments	(2)			0.098	0.198	0.202	**0.498**
Title 2:	Commitments	(1a)			0.026	0.052	0.053	**0.131**
	Payments	(2a)			0.026	0.052	0.053	**0.131**
Title 3:	Commitments	(3a)			0.360	0.160	0.080	**0.600**
	Payments	(3b)			0.360	0.160	0.080	**0.600**
TOTAL appropriations for ESMA <30.10.04>	Commitments	=1+1a +3a			**0.484**	**0.410**	**0.335**	**1.229**
	Payments	=2+2a +3b			**0.484**	**0.410**	**0.335**	**1.229**

Heading of multiannual financial framework	7	'Administrative expenditure'

EUR million (to three decimal places)

		2023	2024	2025	2026	2027	**TOTAL**
DG: <…….>							
• Human Resources							
• Other administrative expenditure							
TOTAL DG <…….>	Appropriations						

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)						

EUR million (to three decimal places)

		2023	2024	2025	2026	2027	**TOTAL**
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments			**0.863**	**0.641**	**0.545**	**2.049**
	Payments			**0.863**	**0.641**	**0.545**	**2.049**

3.2.2. *Estimated impact on EIOPA's and ESMA's appropriations*

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☑ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			2023		2024		2025		2026		2027		**TOTAL**	
	OUTPUTS													
	Type[46]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1: EIOPA														
- Output	Consumer testing						1	0.510					1	0.510
- Output	Assessment of costs and performance of retail investment products						1	0.300	1	0.300	1	0.150	1	0.750
Subtotal for specific objective No 1								0.810		0.300		0.150		1.260
SPECIFIC OBJECTIVE No 2: ESMA														
- Output	Consumer testing						1	0.500						0.500
- Output	IT system						1	0.400	1	0.400	1	0.200		1.000
Subtotal for specific objective No 2								0.900	1	0.400	1	0.200		1.500
TOTAL COST								1.710		0.700		0.350		2.760

46 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

3.2.3. *Estimated impact on EIOPA's and ESMA's human resources*

3.2.3.1. Summary

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☑ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

EIOPA[47]	**2023**	**2024**	**2025**	**2026**	**2027**	**TOTAL**
Temporary agents (AD Grades)			0.079	0.160	0.164	**0.403**
Temporary agents (AST grades)					0.082	**0.082**
Contract staff			0.035	0.072	0.073	**0.180**
Seconded National Experts						
TOTAL			**0.114**	**0.232**	**0.319**	**0.665**

Staff requirements (FTE):

EIOPA	**2023**	**2024**	**2025**	**2026**	**2027**	**TOTAL**
Temporary agents (AD Grades)			1	1	1	**1**
Temporary agents (AST grades)					1	**1**
Contract staff			1	1	1	**1**
Seconded National Experts						
TOTAL			**2**	**2**	**3**	**3**

[47] Total Cost EU and NCA (including NCA share of employer's pension contributions)

EUR million (to three decimal places)

ESMA	**2023**	**2024**	**2025**	**2026**	**2027**	**TOTAL**
Temporary agents (AD Grades)			0.181	0.369	0.377	0.927
Temporary agents (AST grades)						
Contract staff			0.081	0.164	0.167	0.412
Seconded National Experts						
TOTAL[48]			**0.262**	**0.533**	**0.544**	**1.339**

Staff requirements (FTE):

ESMA	2023	2024	2025	2026	2027	**TOTAL**
Temporary agents (AD Grades)			2	2	2	**2**
Temporary agents (AST grades)						
Contract staff			4	4	4	**4**
Seconded National Experts						
TOTAL			**6**	**6**	**6**	**6**

[48] Total Cost EU and NCA (including NCA share of employer's pension contributions)

3.2.3.2. Estimated requirements of human resources for the parent DG

– ☑ The proposal/initiative does not require the use of human resources.

– ☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• **Establishment plan posts (officials and temporary staff)**								
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)								
20 01 02 03 (Delegations)								
01 01 01 01 (Indirect research)								
10 01 05 01 (Direct research)								
• **External staff (in Full Time Equivalent unit: FTE)**[49]								
20 02 01 (AC, END, INT from the 'global envelope')								
20 02 03 (AC, AL, END, INT and JPD in the Delegations)								
Budget line(s) (specify)[50]	- at Headquarters[51]							
	- in Delegations							
01 01 01 02 (AC, END, INT – Indirect research)								
10 01 05 02 (AC, END, INT – Direct research)								
Other budget lines (specify)								
TOTAL								

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary

[49] AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

[50] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

[51] Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

3.2.4. *Compatibility with the current multiannual financial framework*

– ☑ The proposal/initiative is compatible the current multiannual financial framework.

– ☑ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. The EIOPA <03 10 03> and ESMA <03 10 04> budget lines will need to be reprogrammed to provide for the additional appropriations identified in section 3.2.1

– ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[52].

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts. N/A

3.2.5. *Third-party contributions*

– ☐ The proposal/initiative does not provide for co-financing by third parties.

– ☑ The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	2023	**2024**	**2025**	**2026**	**2027**	**Total**
Estimate of costs covered by NCA Contributions			1.320	1.020	0.884	3.224
TOTAL appropriations co-financed (including employer's pension contributions)			**1.320**	**1.020**	**0.884**	**3.224**

–

[52] See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

3.3. Estimated impact on revenue

– ☑ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☐ on other revenue

  – please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[53]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

[53] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

Appendix to the Legislative Financial Statement

General Assumptions:

- Legislation enters into force in 2025.
- The cost of additional staff expenditure (Title 1) has been calculated using the average staff costs applicable from January 2023 of EUR 142 000 per Temporary Agent and EUR 62 000 per Contract Agent (i.e., the total standard average costs per Temporary Agent and per Contract Agent after subtracting the standard EUR 29 000 cost for the building and IT costs associated with additional FTEs, known as 'habillage').

  The current correction coefficients applicable for EIOPA in Frankfurt (100.6) and ESMA in Paris (116.8) were applied to these standard costs, which were then indexed at 2% from 2024 (as is standard practice when programming the Union budget on the basis that that in some years inflation may be less and in others it may be more).
- The cost of additional infrastructure and operating expenditure (Title 2) has been calculated by applying the EUR 29 000 standard 'habillage' cost of building and IT per FTE applicable to LFS calculated in 2023 plus a standard cost allowance of EUR 2 500 per FTE for other administrative costs not covered by the 'habillage' allocation (i.e. EUR 31 500 per FTE). As for the Title 1 staff expenditure costs, the EUR 31 500 per FTE has been indexed at 2% as from 2024.

Justification for the levels of resources requested (staff and operational costs)

Requested resources are necessary for the performance of the following tasks by EIOPA and ESMA:

1. Technical advice by ESMA and EIOPA for the development of an EU template for costs disclosures under MiFID II and IDD
2. ESMA and EIOPA to develop guidance on the use of "vital information" in marketing communications under MiFID and IDD
3. Technical advice by ESMA and EIOPA for the criteria for "value for money" assessment, including the methodology for comparisons (benchmarks) and compilation of information for such benchmarks (both for distributors and manufacturers)
4. Data gathering on costs and performance of retail investment products (for the purposes of compiling benchmarks)
5. Development and updating, where necessary, of reporting templates
6. Empower ESMA and EIOPA to impose on firms the systematic use of risk warnings
7. The setting up and running of collaboration platforms by ESMA (and EIOPA)
8. NCAs would be required to report consolidated data on cross-border activity to EIOPA. EIOPA would be mandated to produce a limited but insightful and harmonised reporting of cross border activities.

These will be new tasks for EIOPA and ESMA. Both ESMA and EIOPA are planning to redeploy current FTE's to some of the tasks (4 and 1.3 FTEs respectively). However, resource needs corresponding to the envisaged tasks cannot be fully covered by reallocation of existing staff or

already planned operational expenditure. It is estimated that both ESAs will need to assume those tasks as of 2025.

Due to temporary nature of tasks 1, 2, 3, 5, 6, 8 primarily Contract Agent posts were envisaged for their performance.

Certain efficiency gains have been factored in as a result of grouping the following tasks:

- tasks 1, 2, 6
- tasks 3, 5, 8
- tasks 4, 7

which can be performed by the same personnel either simultaneously or in a sequential manner.

Personnel and IT budgets for task 4 (data gathering on costs and performance of retail investment products) are significantly higher for ESMA as it is expected to perform the task on a larger scale (gather information on a greater number of products).

Procurement costs for consumer testing have been estimated at 500,000 EUR for EIOPA and ESMA each, with synergies possible should a joint procurement procedure be pursued.

Estimated NCA cost for activities to be conducted by EIOPA

EUR million

EIOPA			2023	2024	2025	2026	2027	TOTAL
Title 1: Staff expenditure	Commitments	(1)			0.072	0.147	0.202	**0.421**
	Payments	(2)			0.072	0.147	0.202	**0.421**
Title 2: Infrastructure and operating expenditure	Commitments	(1a)			0.019	0.039	0.050	**0.108**
	Payments	(2a)			0.019	0.039	0.050	**0.108**
Title 3: operational expenditure	Commitments	(3a)			0.486	0.180	0.090	**0.756**
	Payments	(3b)			0.486	0.180	0.090	**0.756**
TOTAL appropriations	Commitments	=1+1a +3a			**0.577**	**0.366**	**0.342**	**1.285**
	Payments	=2+2a +3b			**0.577**	**0.366**	**0.342**	**1.285**

Estimated NCA cost for activities to be conducted by ESMA

EUR million

ESMA			2023	2024	2025	2026	2027	TOTAL
Title 1: Staff expenditure	Commitments	(1)			0.164	0.335	0.342	**0.841**
	Payments	(2)			0.164	0.335	0.342	**0.841**
Title 2: Infrastructure and operating expenditure	Commitments	(1a)			0.039	0.079	0.080	**0.198**
	Payments	(2a)			0.039	0.079	0.080	**0.198**
Title 3: operational expenditure	Commitments	(3a)			0.540	0.240	0.120	**0.900**
	Payments	(3b)			0.540	0.240	0.120	**0.900**
TOTAL appropriations	Commitments	=1+1a +3a			**0.743**	**0.654**	**0.542**	**1.939**
	Payments	=2+2a +3b			**0.743**	**0.654**	**0.542**	**1.939**

Estimated NCA cost for activities to be conducted by EIOPA and ESMA

EUR million

EIOPA and ESMA			2023	2024	2025	2026	2027	TOTAL
Title 1: Staff expenditure	Commitments	(1)			0.236	0.482	0.544	**1.262**
	Payments	(2)			0.236	0.482	0.544	**1.262**
Title 2: Infrastructure and operating expenditure	Commitments	(1a)			0.058	0.118	0.130	**0.306**
	Payments	(2a)			0.058	0.118	0.130	**0.306**
Title 3: operational expenditure	Commitments	(3a)			1.026	0.420	0.210	**1.656**
	Payments	(3b)			1.026	0.420	0.210	**1.656**
TOTAL appropriations	Commitments	=1+1a +3a			**1.320**	**1.020**	**0.884**	**3.224**
	Payments	=2+2a +3b			**1.320**	**1.020**	**0.884**	**3.224**

Estimated total cost (EU and NCA) for activities to be conducted by EIOPA

EUR million

EIOPA			2023	2024	2025	2026	2027	TOTAL
Title 1: Staff expenditure	Commitments	(1)			0.114	0.232	0.319	**0.665**
	Payments	(2)			0.114	0.232	0.319	**0.665**
Title 2: Infrastructure and operating expenditure	Commitments	(1a)			0.032	0.065	0.083	**0.180**
	Payments	(2a)			0.032	0.065	0.083	**0.180**
Title 3: operational expenditure	Commitments	(3a)			0.810	0.300	0.150	**1.260**
	Payments	(3b)			0.810	0.300	0.150	**1.260**
TOTAL appropriations	Commitments	=1+1a +3a			**0.956**	**0.597**	**0.552**	**2.105**
	Payments	=2+2a +3b			**0.956**	**0.597**	**0.552**	**2.105**

Estimated total cost (EU and NCA) for activities to be conducted by ESMA

EUR million

ESMA			2023	2024	2025	2026	2027	TOTAL
Title 1: Staff expenditure	Commitments	(1)			0.262	0.533	0.544	**1.339**
	Payments	(2)			0.262	0.533	0.544	**1.339**
Title 2: Infrastructure and operating expenditure	Commitments	(1a)			0.065	0.131	0.133	**0.329**
	Payments	(2a)			0.065	0.131	0.133	**0.329**
Title 3: operational expenditure	Commitments	(3a)			0.900	0.400	0.200	**1.500**
	Payments	(3b)			0.900	0.400	0.200	**1.500**
TOTAL appropriations	Commitments	=1+1a +3a			**1.227**	**1.064**	**0.877**	**3.168**
	Payments	=2+2a +3b			**1.227**	**1.064**	**0.877**	**3.168**

Estimated total cost (EU and NCA) for activities to be conducted by EIOPA and ESMA

EUR million

EIOPA and ESMA			2023	2024	2025	2026	2027	TOTAL
Title 1: Staff expenditure	Commitments	(1)			0.376	0.765	0.863	**2.004**
	Payments	(2)			0.376	0.765	0.863	**2.004**
Title 2: Infrastructure and operating expenditure	Commitments	(1a)			0.097	0.196	0.216	**0.509**
	Payments	(2a)			0.097	0.196	0.216	**0.509**
Title 3: operational expenditure	Commitments	(3a)			1.710	0.700	0.350	**2.760**
	Payments	(3b)			1.710	0.700	0.350	**2.760**
TOTAL appropriations	Commitments	=2+2a +3b			**2.183**	**1.661**	**1.429**	**5.273**
	Payments	=2+2a +3b			**2.183**	**1.661**	**1.429**	**5.273**