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EU Retail Investment Strategy

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 2016/97/EU of the European Parliament and of the Council as regards the strengthening of Union retail investor protection rules

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In line with the European Commission's stated 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 come forward with a strategy for retail investments in Europe, which at its core will seeks to ensure 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 the implementation of parts of the Action Plan which 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 adopted Resolution emphasised that increased retail investor participation is contingent on a change in investment culture, and such change could only come into effect when retail investors are 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 important problems along the retail investor journey which diminish the ability of retail investors to take full advantage of capital markets: 1) retail investors would have difficulties accessing salient, comparable and easily understandable

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

investment product information to help them make informed investment choices; 2) retail investors are exposed to a growing risk of being influenced inappropriately by unrealistic marketing information through digital channels and misleading marketing practices; 3) there 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. The lack of trust is one of the reasons contributing to lower levels of retail participation and is a drag on retail growth potential. Other influencing factors are the lack of financial means[5], concerns about the risks, uncertainty about the potential returns, lack of understanding/complexity and a preference to put money elsewhere[6].

Moreover, 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[7].

The EU Retail investment strategy aims to strengthen the legislative framework to ensure that retail investors are empowered to take more informed investment decisions that better correspond to their needs and objectives and are adequately protected in the single market by a coherent regulatory framework. This will enhance trust and confidence and in this way bring citizens closer to capital markets and enhance 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 as well as 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 as well as that products

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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 According to the survey, around half of the respondents did not consider that they had sufficient means to invest.

6 Eurobarometer survey on Retail Financial Services and Products, October 2022.

7 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).

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, as well as 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 is adopted as part of one package together with a second legislative proposal, the amending Regulation [OJ: insert reference of the amending regulation] on key information documents for packaged retail and insurance-based investment products (PRIIPs[8]). The amending Regulation is fully complementary with this Omnibus directive as it aims to improve the PRIIPs legal framework by adapting disclosures to the digital environment and the evolving needs of retail investors, and by providing further clarity in some areas. Some of the changes, notably with regard to the use of electronic format, are proposed to better align with the approach under the Markets in financial instruments Directive (MiFID[9]) and the Insurance Distribution Directive (IDD[10]) and build on the experience gained from the implementation of the Pan-European Personal Pension Product (PEPP[11]) disclosure document.

This proposal is also aligned with the objectives of upcoming Commission initiatives which will seek to facilitate data sharing within the financial services sector[12]. By further specifying and strengthening the client profiling process (i.e. when conducting a suitability or appropriateness assessment), this initiative is expected to facilitate more seamless and cost-effective data sharing and re-use. In turn, this should benefit consumers through improved more efficient and innovative products and services as well as facilitating competition by increasing transparency and reducing switching costs.

- **Consistency with other Union policies**

This proposal is in line with the objectives of the CMU. 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. Enhanced retail investor participation in capital markets has the potential to contribute to increasing the capital pool available for market financing of economic activities and enable companies to better diversify

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8 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)

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

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

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,[13] the 2017 Mid-Term Review of the CMU Action Plan[14] and the 2020 CMU Action Plan[15], aimed at facilitating access to finance for companies, especially SMEs, with a view to supporting jobs and growth in the EU.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The Union 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[16]'),

– the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ('UCITS[17]'),

– Alternative Investment Fund Managers ('AIFMD[18]').

The legal bases of the Directives are Articles 53(1) and, in the case of Directives (EU) 2009/138/EC and 2016/97, Article 62 of the Treaty on the Functioning of the European

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13 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

14 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)

15 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

16 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)

17 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)

18 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

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, Union 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 undertakings for collective investment in transferable securities (UCITS) and alternative investment funds and their managers (AIFMD) are long established at EU-level. This is because only Union action can set a common regulatory framework that ensures the same level of retail investor 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 legislation 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 to retail clients before and after making investments decisions, requirements on 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. These changes are necessary and proportionate to strengthen retail investor protection, whilst 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 realised 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 aspects 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. Nevertheless, the evaluation also identified a number of important elements that have not sufficiently contributed to the achievement of the intended objectives. The evaluation identified areas for improvement regarding the requirements of the underlying Directives in the areas of disclosure of information, inducements and advice, product governance requirements and suitability assessments.

In the area of 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 conflict of interest in view of the existing information asymmetry.

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 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, as well as taking 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.

On 11 May 2021 DG FISMA launched a public consultation on 'A Retail Investment Strategy For Europe' and 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.

The public consultation ran until 3 August 2021 and received 186 responses 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 during several meetings of a group of Member State experts.

The results of the public consultation were considered in the proposal and the Commission has 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[19] issued by the Commission on 27 July 2021, both ESMA and EIOPA provided an Opinion[2021] 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 consultants led by Kantar, 'Disclosure, inducements, and suitability rules for retail investors study', published in 2022[22].

The preparation of this proposal also benefitted from the advice of the CMU High-level forum (CMU HLF), as well as the discussions that were held at meetings of the Government Expert Group on Retail Financial Services (GEGRFS) and from contributions from the Financial Services User Group (FSUG)[23].

- **Impact assessment**

This proposal is accompanied by an impact assessment REF/link. 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 REF/link.

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.

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19 Ref Ares(2021)4803687- 27/07/2021 and Ref Ares(2021)4805409- 27/07/2021

20 Ref. ESMA35-42-1227

21 Ref. EIOPA-BoS-22/244

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

23 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 can be found here: https://finance.ec.europa.eu/regulation-and-supervision/expert-groups-comitology-and-other-committees/financial-services-user-group-fsug_en.

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 informational 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. The impact assessment concludes that an EU-wide full ban would be the most effective measure to remove or significantly reduce potential conflicts of interest, by reducing an important source of consumer detriment.

However, a full ban on inducements would entail significant and sudden impacts on existing distribution systems, with consequences that are hard to predict. 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, this legislative package proposes to address the conflicts of interest that 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.

In addition, 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 this assessment shows that the detriment to consumers remains, despite the additional safeguards, the Commission will consider proposing alternative measures, including a potential ban on inducements.

In the case of Value for Money, the impact assessment considered a choice between strengthening product governance rules for manufacturers[24], by requiring the comparison of their products against relevant ‘manufacturer benchmarks’[25], and an alternative option to

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

25 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’).

impose similar duties also at the level of distributors[26], including the comparison of certain products to relevant 'distributor benchmarks'[27]. 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.

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 conditions 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 benefit both existing investors, but also 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, and the description of issues is improved and 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

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26 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.

27 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.

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 information requirements 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, whilst 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, covering also social media and other digital channels.

On the other hand, additional administrative costs will arise from supervisory reporting against the Value for Money benchmarks. This obligation will imply one-off costs and ongoing costs for both manufacturers and distributors[28].

- **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).

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, these new tasks will require over time a total of 11 full time employees (FTE) to take on the tasks of developing and administering Value for Money benchmarks and gathering and processing data received from NCAs. ESMA will also incur XX additional 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 5 full time employees (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 incur XX additional IT costs and

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

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.

5. OTHER ELEMENTS

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

The Commission will monitor the 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, whereas Article 2 proposes amendments to IDD. Article 3 contains amendments to Solvency II, whereas 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(12l) and Article 2(23) 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(19d) and Article 2(7a) are introducing a new point (w) in Article 69(2) MiFID and point (t) 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(12l), new paragraph 5c in Article 24 MiFID and Article 2(23), new paragraph 5 in Article 29 IDD).

Article 1(12l) and Article 2(23) 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(18) 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(12k) introduces a new paragraph 5b in Article 24 MiFID and Article 2(18) 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(12o) introduces a new paragraph 11a in Article 24 MiFID, to ensure that retail investor protection requirements cannot be contractually circumvented by investment firms where they provide personal recommendations at their own initiative.

Article 1(14) 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 a 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 a quantification of their impact on expected returns, in a standardised and comprehensible way. Article 2(23) 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(1d) IDD to disclose information on all costs, associated charges and third-party payments, as well as their impact on expected returns.

Under Articles 24b(2) and Article 29(4) IDD, ESMA and EIOPA, respectively will be empowered 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), (5) and (6) 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, inter alia, 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(2) of the amending directive provides for the deletion of Articles 183, 184 and 185 of Solvency II. In Articles 2(14) to (16), 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. Article 20(9) 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, these provisions 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, as well as to clarify the responsibilities of investment firms and insurance distributors in relation to marketing communications, also when using digital channels and when relying on third parties.

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

Article 1(6) 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(7) introduces a new paragraph 3a in Article 16 MiFID to include a requirement for investment firms to have in place effective organisational and administrative arrangements 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(15) introduces a new Article 24c MiFID and Article 2(21) introduces 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, not misleading, and be balanced in their presentation of risks and benefits, as well as appropriate for the target group of investors they are aimed at (Article 26a(1) to (3) IDD.

Article 24c(3) MiFID and Article 26a(3) 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.

Articles 24c(4) and 24c(5) MiFID and Articles 26a(4) and 26a(5) IDD require investment firms, insurance undertakings and insurance intermediaries distributing insurance-based investment products to have the necessary controls in place to ensure compliance 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 finally impose a requirement on Member States to ensure that national competent authorities have the necessary empowerment to take timely and effective action in relation to 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, whereas Articles 2(23) and (24) 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.

While the existing bans on inducements regarding independent advice and portfolio management are maintained in MiFID, Article 24a MiFID introduces a ban on inducements paid from manufacturers to distributors in relation to the reception and transmission of orders, or execution of orders to or on behalf of retail clients. These two investment services cover execution-only sales where no advice relationship between the investment firm and the client exists. Similarly, Article 29a 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.

The objective of these amendments is to eliminate potential conflicts of interest between distributors and retail investors when no advice is provided. Specifically in relation to MiFID, the existing exemptions to the bans on inducements are also 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 to the extent that they are clearly disclosed. Article 24a MiFID also clarifies that the ban on inducements in relation to execution only services is not applicable to situations where investment firms provide advice relating to the same transaction or in relation to fees or remuneration received or paid from an issuer for placement and underwriting services. In order 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(26) strengthens the safeguards for advice provided on an independent basis in Article 30(8), in alignment with MiFID. It does so by making the independent basis category compulsory instead of optional, and by banning the reception or the provision of inducements in relation to independent advice.

In addition, Articles 1(12), propose amendments to Article 24(1a) MiFID and Articles 2(25) and (26), 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 shall be applied both in MiFID and IDD (which replaces the existing "quality enhancement" test of MiFID, and the "no detriment" test of IDD). In order to act in accordance with 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 conflict 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(24) propose, in Article 24a(5) MiFID and Article 29a(5) IDD, a review clause requiring the European Commission to assess the effects of third-party payments on the retail investor segment three 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 products deliver value for money to retail investors

In order to strengthen product governance rules and regulate pricing processes, with a view to limiting the offer of products that bear poor or no "Value for Money" for retail investors, Article 1(8) introduces a new Article 16a MiFID and Article 2(19) amends Article 25 IDD. The proposed amendments apply to packaged retail and insurance-based investment products (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 are 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 the assessment of whether such costs and charges do not undermine the value which is expected to be brought by the product (Article 16a(1) MiFID and Article 25(1) IDD). 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.

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 16a(1) MiFID, and Article 25(1) IDD). For UCITS, the same effect is achieved through a new paragraph ‘1bis of Article 14, and for AIFMD, through a new paragraph ‘1bis 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 16a(9) MiFID and Article 25(1) IDD, paragraph 1bis(e) of Article 14 UCITS and paragraph 1bis(e) of Article 12 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 16a(2) MiFID and Article 25(1) IDD, Article 20a UCITS and Article 24(2) AIFMD).

As in the case of product manufacturers, a new requirement is introduced for distributors to quantify the distribution costs and perform an overall price assessment against relevant cost and performance benchmarks, taking into account manufacturers' own assessments (new Article 16a(4) MiFID, Article 16(1) IDD).

Article 16a(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, while a new paragraph 6 extends this obligation to PRIIPs manufactured by firms other than investment firms. 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 the 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 16a(7) MiFID and Article 25(1) IDD introduce a requirement on 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 16a(8) allows firms that both manufacture and distribute investment products to provide an integrated pricing process.

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

Article 16a(9) MiFID, Article 24 AIFMD, Article 20a UCITS and Article 25(1) IDD empower ESMA and EIOPA to develop and make publicly available benchmarks on the basis of data on costs and 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 to benchmarks should be perceived as an additional exercise, which should be undertaken during the pricing process and 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, is not a circumstance alleviating the manufacturer or distributor from the obligation to demonstrate that costs and charges are justified and proportionate.

Article 16a(11) and (12) MiFID and article 25(2) IDD empower the Commission as well as ESMA and EIOPA to initiate the technical groundwork to create the relevant benchmarks. This includes a delegated act to be developed by the Commission to determine the methodologies for the development of the benchmarks, as well as criteria and elements which should be covered when justifying and demonstrating proportionality of costs and charges (Article 16a(11)). It also includes a mandate to ESMA (Article 16a(12) MiFID) and EIOPA (Article 25(2) IDD) to develop regulatory technical standards to define data sets, data standards and the arrangements of the various reporting obligations.

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(1bis)(a) UCITS and 12(1bis)(a) 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(17) and 2(26) 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 the clients and customers in a clear and simple way, and to obtain all relevant information from the 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 where 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 before the conclusion of the transaction to enable clients to seek and get 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 sufficient 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, as well as their portfolio diversification, will not be required.

In order to increase the relevance of the appropriateness assessment and to 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 clients' explicit request.

Ensuring high professional standards for investment advisors

The revised rules aim to strengthen and align the requirements on knowledge and competence of investment advisors set out in MiFID II and IDD. Articles 1(16) and 2(5) propose amendments to Article 25 MiFID as well as to Article 10 and Annex 1 IDD.

Article 25 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 proven by obtaining a certificate. In addition, a minimum requirement for ongoing professional training is introduced in MiFID, in line with existing requirements under IDD. Article 1(2) amends Article 3 MiFID to ensure that persons operating under national exemptions are subject to professional requirements that are at least analogous. In IDD, the requirements on 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 only insurance-based investment products.

Client categorisation: easing restrictions for investors to qualify as professional

In order to ensure a more appropriate classification of clients as well as to reduce administrative burdens, Article 1(26) 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 as well as the insertion of a possible fourth criterion relating to relevant education or training. Furthermore, the amendments 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, therefore 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(19) and 2(7) introduce amendments in Article 69 MiFID and Article 12 IDD, respectively, to enable supervisors to use supervisory tools and quickly take action against misleading marketing practices (Article 69(2ka), restrict access to websites that pose a threat to investor protection Article 69(2v) and carry out mystery shopping activities (Article 69(2ca). Article 12(3) IDD introduces a detailed list of powers that national competent authorities shall 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(10) and 2(28) introduce the new Article 20a 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.

In order to strengthen supervisory enforcement in cross-border cases the proposal includes the following additions and changes:

– Articles 1(18) 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 where supervision should focus on and where stronger cooperation may be needed, and codifies reporting that is already carried out to a large extent at the ESA's initiative.

– Articles 1(23) and 2(9) introduce the new Article 87a MiFID and Article 12b IDD, respectively, to provide for the establishment of collaboration platforms that facilitate the 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 that are not adequately addressed by the home Member State's competent authority. Article 1(22) of this amending directive proposes to amend the existing provisions to accelerate and facilitate cooperation between NCAs, by facilitating the information exchange and by 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 not sufficiently act). 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) and 2(2) aim to strengthen supervisory convergence as regards the authorisation of firms, via an amendment to Article 7(3) and Article 7(3a) 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 to 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.

Lastly, Article 1(4) amends Article 5 MiFID to transfer into the legal text the existing requirement set out in Recital 46 of MiFID that an investment firm shall not only carry out its activity in other Member States but also in its home Member State. In the case of IDD, the above amendments reinforce the mechanisms for supervisory enforcement of business conduct in relation to the distribution of insurance products generally and not only in relation to insurance based investment products.

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(24) and 2(11) insert, respectively, the new Article 88a MiFID and Article 16a IDD.

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 2016/97/EU of the European Parliament and of the Council as regards the strengthening of Union retail investor protection rules

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[29],

[Having regard to the opinion of the Committee of the Regions][30],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) A core objective of the Capital Markets Union (CMU) 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 empowers them to take investment decisions that correspond to their needs and aims and adequately protects them in the single market.

(2) The Union has in place a developed legislative framework designed to protect retail investors and create an environment which inspires confidence. The Commission's work to evaluate and assess this framework has identified a number of important problems. These include 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, 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 that are ultimately paid by retail investors and concerns about risks of bias in the investment advice process.

(3) To ensure that the legal framework for retail investments sufficiently empowers consumers, adequately protects them, ensures fair market outcomes and ultimately creates the necessary conditions to grow retail investor participation in the capital

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29 OJ C […], […], p. […].

30 OJ C […], […], p. […].

markets, the Commission is putting forward the EU Retail investment strategy containing a package of measures to amend Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97.

(4) 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 Directive (EU) 2014/65 and Directive (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.

(5) In light of the potential disruptive impact caused by the introduction of a full prohibition of inducements at this juncture, 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 if appropriate, propose alternative measures, including a potential ban on inducements.

(6) Consequently, it is appropriate to prohibit the payment and receipt of inducements by manufacturers of financial products in non-advised sales channels. Given that these services do not involve the provision of advice to retail investors, there is insufficient justification to allow for the payment of inducements in this context. In the case of Directive 2014/65 (EU), such prohibition would cover the execution or reception and transmission of orders and in the case of Directive 2016/97 (EU), non-advised sales. In order to avoid restricting issuers' ability to raise funding, this prohibition should not apply to payments in relation to underwriting and placement services provided to an issuer, when 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 the same transaction. 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.

(7) The existing safeguards conditioning the payment or receipt of inducements, which under Directive 2014/65 (EU) require that the inducement should be designed to enhance the quality of the service to the client, or under Directive 2016/97 (EU) 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 these criteria and introduce a new, common test both in MiFID and IDD, 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 adequate 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, structured products with hedging elements, etc.. 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.

(8) The existing requirements on disclosure of inducements are further strengthened with a view to ensuring that retail investors understand the general concept of inducements, the potential for conflict of interest, as well as the impact of inducements on the overall costs and expected returns.

(9) In order to 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 would not be required to obtain and assess information from the clients relating to their knowledge and experience or existing portfolios.

(10) In order to assess the effectiveness of these measures, three years after the date of transposition of this directive and after having consulted ESMA and EIOPA, the Commission shall prepare a report on the effects of third-party payments on retail investments which, if necessary, should be accompanied by proposals to further strengthen the framework.

(11) 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. In order to ensure that products offer value for money for retail investors, Member States should ensure that firms licensed under Directive 2014/65 (EU) or Directive 2016/97 (EU) manufacturing or distributing investment products have in place clear pricing processes that enable a clear identification and quantification of all costs charged to retail investors and are designed to make sure 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.

(12) Those pricing process assessments need to be performed by manufacturers of investment products. Building on those assessments, distributors should make similar

assessments that additionally take into consideration the costs of distribution and other costs not already included in the manufacturer's assessment.

(13) 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.

(14) 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 be empowered to 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.

(15) To assist manufacturers and distributors in their assessments, the Commission should be empowered to adopt delegated acts on the criteria and elements to be used in determining whether costs and performance are justified and proportionate.

(16) In order 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 be empowered to develop regulatory technical standards to determine the data sets, data standards and methods and formats for the information to be reported.

(17) 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 AIFs and 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. To ensure that costs are not being unduly charged, additional specifications will be developed in delegated acts.

(19) UCITS management companies and AIFMs should compensate investors where undue costs have been charged, including situations where costs have been miscalculated to the detriment of investors, and inform the competent authorities and financial auditors of the investment funds and their managers, as well as the depositary of those funds. This should be without prejudice to the possibility to recover those costs from a third party if they have been unable to prevent undue costs from being charged, directly or indirectly, to investors. 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 also be possible as an administrative measure and sanction.

(20) The pricing process under AIFMD and UCITSD should ensure that costs borne by retail investors are justified and proportionate to the characteristics of the product, in particular the investment objective and strategy, level of risk and expected returns of the funds, so that they deliver value for money to investors. AIFMs and UCITS management companies remain responsible for the quality of their pricing process. In particular, they should ensure that costs are comparable to market standards, for example by comparing the costs of funds with similar investment strategies and characteristics available on publicly available databases. However, in order to make the pricing process more objective and to equip AIFMs, UCITS 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 be empowered to develop benchmarks, based on data related to the cost and performance of investment products that ESMA will receive 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 management companies and AIFMs. These benchmarks should build on existing data from public disclosures and supervisory reporting, unless additional data is 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. This assessment and the measures taken should be documented and be provided to competent authorities upon their request.

(21) The Commission should be empowered to adopt delegated acts in particular 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. In order to improve the quality of advice and ensure a level playing field across the EU, strengthened minimum common standards on the necessary knowledge and competence requirements should be introduced. This is particularly relevant given the increased complexity and continuous innovation in the design of financial instruments and insurance-based investment products, as well as the increasing importance of sustainability-related considerations. Member States should require investment firms, as well as insurance and reinsurance distributors, to ensure that both natural persons giving investment advice on behalf of the investment firm or as insurance intermediaries and the relevant employees of insurance undertakings and insurance intermediaries possess the necessary knowledge and competence to fulfil their obligations. To provide assurance to clients, customers and competent authorities that the level of knowledge and competence of both such natural persons and insurance intermediaries and the relevant 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 this end, a minimum number of hours per year of professional training and development to be undertaken by natural persons giving investment advice should be laid down and its successful completion be proven by a certificate.

(23) The increasing provision of investment services via digital means creates new opportunities for retail investors and at the same time enables firms and insurance distributors to distribute investment products and services faster and to a wider group of retail investors; the latter can entail additional risks. It is important that competent authorities are equipped with adequate powers and procedures 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. ESMA and EIOPA should be informed by the competent authorities about such behaviour and should consolidate and publish all related decisions issued by competent authorities so that such information would be available to retail investors.

(24) Recital 46 of Directive (EU) 2014/65 clarifies that Member States should not grant or should withdraw authorisation where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of avoiding the stricter standards or supervisory enforcement in another Member State within the territory of which it intends to carry out or does carry out the greater part of its activities. It is therefore appropriate that Member States effectively ensure, both at the authorisation stage and on an ongoing basis, that investment firms do not only provide services and carry out activities in other Member States than the

one where they have obtained the authorisation. This criterion should not be considered to be fulfilled where the scope of activity in the home Member State is so low that it clearly indicates an intention to circumvent the application of this provision.

(25) 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 the firm in cases of cross-border provision of services, the single market relies on trust that stems from the adequate supervision by the home competent authorities. The principle of mutual recognition requires efficient cooperation between home and host Member States to ensure that an adequate 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. In order to further facilitate cooperation between competent authorities, and to further strengthen the supervisory efforts, the above mechanism should be streamlined and those competent authorities that observe similar behaviours on their territory to those already signalled by another authority should be able to refer to the findings of that initiating authority in order to initiate a procedure under Article 86 of Directive (EU) 2014/65.

(26) Passport notifications under Directive (EU) 2014/65 and Directive (EU) 2016/97 do not require information on the scale of the services to be provided cross-border, and whether or not such activity is conducted. In order to provide ESMA and EIOPA as well as competent authorities with an adequate understanding of the extent of cross-border services and allow them to adapt their supervisory activities, information on the provision of such services should be collected. Where an investment firm or an insurance intermediary provides services to more than fifty clients located in another Member State, the investment firm or insurance intermediary should provide its competent authority with basic information on such activities. 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.

(27) In order 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 Directive (EU) 2009/138/EC, should have the same power with regard to insurance distribution activities under Directive (EU) 2016/97. Where there are serious concerns about potential investor detriment and if 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 should have the power to settle the disagreement in accordance with Article 19 of Regulation (EU) No 1095/2010 and

Regulation (EU) No 1094/2010 respectively and initiate and coordinate on-site inspections.

(28) Disclosure on costs, associated charges and third-party payments, linked to investment products are a key aspect of investor protection due to their impact on expected returns. Retail investors should be presented in good time with clear information on costs, associated charges, third-party payments, prior to taking an investment decision. In order to enhance comparability of these elements, the information should be provided in a standardised manner. Regulatory technical standards should clarify and harmonise the content and format of disclosures relating to the costs, associated charges and third-party payments including explanations that investment firms should provide to clients, in particular as regards the third-party payments.

(29) In order to ensure that clients and customers receive periodic information on their investments, 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 be required to provide an annual statement to their clients and customers which would include an overview of the products they hold, all costs, associated charges and third-party payments, and payments such as dividends, interests, paid and received by the investor over a period of one year, together with an overview of the performance of those financial products. This annual statement should enable 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 reception and transmission and execution of orders, the annual statement should include 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 instrument, the annual statement should include all costs, associated charges and payments received by the client in relation to the services and the financial instruments. For all those services, a detailed breakdown of this information per financial instrument should be provided to the client upon request. 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, such as adjusted individual projections of the expected outcome at the end of the contractual or recommended holding period and a summary of the insurance cover.

(30) Changes in the manner by which investment firms, insurance undertakings and insurance intermediaries advertise financial products and services, such as 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. This should in particular clarify 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 their intended target audience, should also help to improve the application of investor protection principles. Those requirements should extend to marketing practices, when those are used to enhance its reach and effectiveness, or the perception of its

relatability, reliability or comparability. However, to ensure that providers of investment products are not discouraged or prevented from providing financial education material and promoting and improving the financial literacy of investors, such materials and activities should not be considered as falling under the definition of marketing communication and marketing practice.

(31) In order to address developments in marketing practices, including the use of third parties for indirect promotion of products or services, and ensure adequate investor protection, requirements regarding marketing communications should be strengthened. Marketing communications should enable the easy identification of the investment firm, insurance undertaking or insurance intermediary, on whose behalf communications are made, and also include essential information on products and services, presented in a clear and balanced manner. Organisational requirements of investment firms should also be reinforced with an obligation for them to have a policy on marketing communication and practices and adequate controls and reporting to firms' management body to ensure compliance with such policy. Marketing communications and practices should be developed and designated taking into the target audience of the relevant target market.

(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 relevant regulatory requirements. Therefore, it is necessary that Member States ensure that national competent authorities have the necessary powers to supervise and where necessary intervene in a timely manner.

(33) In order to improve the relevance of the suitability assessments, financial advisors should, when considering the suitability of a specific product, on the basis of information from the client or customer which includes information on any existing portfolios, also assess whether the product is suitable for the client's needs for portfolio diversification. Where a distributor conducts an appropriateness assessment, it should be required to obtain from clients and customers information not only about their knowledge and experience on such financial instrument or service, but also about their capacity to bear full or partial losses and their risk tolerance. In the case of a negative appropriateness assessment, the distributor should, in addition to the obligation to provide a warning to the client or customer, be allowed to proceed with the transaction only at the clients' or customer's explicit request. Investment firms, insurance undertakings and insurance intermediaries should be required to explain the purpose of the suitability and appropriateness assessments to their clients and customers in a clear and simple way and retail investors should be informed, via standardised warnings, about the consequences on the quality of the assessment where they do not provide accurate and complete information. In order to ensure harmonisation and efficiency of the different warnings, ESMA and EIOPA should be mandated to develop regulatory technical standards to clarify their content and format.

(34) A wide diversity of financial instruments can be offered to retail investors, which entail different levels of risks of potential losses. Retail investors should 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 clients and customers, including marketing communications, appropriate warnings on those risks. In order for the use of those risk warnings to be harmonised, 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, and should submit technical standards relating to the content and format of such warnings. Competent authorities should also be empowered 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 Union 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 Union.

(35) Increasing the level of financial literacy of retail clients and customers, and of prospective retail clients and potential customers, is key to providing them with greater understanding of how to invest responsibly, in order to adequately balance the risks and benefits involved with investing. Member States should 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, within the meaning of this proposal, 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. Prospective retail investors should be able at all times to access educational material that supports their financial literacy. This is in particular relevant for retail clients and customers that access financial instruments and investment services as well as insurance-based investment products for the first time, and those using digital tools.

(36) It is necessary to ensure that the criteria for determining whether a client possesses the necessary experience, knowledge and expertise to be treated as professional client on request are appropriate and fit for purpose. The identification criteria should therefore also take into account relevant experience gathered outside the financial services sector as well as 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 a client. Therefore, the criteria based on wealth and size of an enterprise should be amended in order to account for clients residing in Member States with lower average GDP per capita.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/65/EU [MiFID]

Directive 2014/65/EU is amended as follows:

1. Article 1 is amended as follows:

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

‘Article 9(3), Article 14, and Article 16(2), (3) and (6), subparagraph 1, 2 and 5 of Article 16a (1), Article 16a(3), subparagraph 1 and 2 of Article 16a(4), Article 16a(7), (8), (10) and (11)(b).’;

2. Article 3 is amended as follows:

(a) paragraph 2, point (b), is replaced by the following:

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

(b) paragraph 2, point (c), is replaced by the following:

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

3. Article 4 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following point (66) is added:

‘(66) ‘marketing communication’ means any disclosure of information other than disclosure required by Union or national law, or financial education material compliant with Article 88b, or constitutive of investment research under this Directive:

(a) made by an investment firm or a third party remunerated or incentivised through non-monetary compensation by the investment firm;

(b) to persons;

(c) in any form and by any means; and

(d) aiming to directly or indirectly promote or entice investment(s) in one or several financial instrument(s) or category(ies) of financial instrument(s) or the use of investment or ancillary services provided by an investment firm.';

(ii) the following points (67) and (68) are added:

‘(67) “marketing practice’ means any strategy, use of a tool or technique applied by an investment firm or any third party remunerated or incentivised through non-monetary compensation by the investment firm, to directly or indirectly disseminate marketing communications, to accelerate or improve the reach and effectiveness of the marketing communications, or in any way promote investment firms, financial instruments or investment services;

(68) ‘online interface’ means any software, including a website, part of a website or an application;’

4. Article 5 is amended as follows:

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

‘(a) any investment firm which is a legal person has its head office in the same Member State as its registered office and does not only provide investment services or perform investment activities in other Member States;’;

5. Article 7 is amended as follows:

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

‘Where the authorisation has not been granted or has been withdrawn, the competent authority shall inform ESMA about the reasons that justify such decision.’;

(b) the following paragraph 3a is added:

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

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

6. Article 9 is amended as follows:

(a) in paragraph 3, the introductory paragraph is replaced by the following:

‘3. 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 paragraph 3, the following point (d) is added:

‘(d) a policy on marketing communications and practices, aiming to ensure compliance with obligations under Article 24c.’

7. Article 16 is amended as follows:

(a) paragraph 1 is amended as follows:

‘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 added:

'3a. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to ensure marketing communications and practices comply with the requirements laid down in Article 24c and the delegated acts adopted on the basis of it.';

(d) the following paragraph 7a is added:

'7a. Where the investment firm provides services on a cross-border basis, investment firms shall establish appropriate procedures and arrangements, including electronic communication channels, to ensure that client's rights under this Directive can be exercised without restriction and that client's complaints are dealt with properly. Those procedures shall allow investors to file complaints in the same language in which the communication material and services were provided.

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

8. A new Article 16a is inserted:

'Article 16a

Product governance requirements

(1) An investment firm which manufactures financial instruments for sale to clients shall 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 ensure 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) 1286/2014 - a clear identification and quantification of all costs and charges related to the financial instrument and an assessment of whether these 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 letter (e) shall include a comparison with the relevant benchmark, where available, on costs and performance published by ESMA in accordance with paragraph 9.

An investment firm shall not approve any financial instrument which deviates from the relevant benchmark referred to in para 9, unless that investment firm has performed additional testing and further assessments and established that costs and charges are nevertheless justified and proportionate, and that the product meets the target market's objectives and needs. Where no relevant benchmark exists for a financial instrument, an investment firm shall approve the financial instrument only if they have established through product testing and assessments that the costs and charges are justified and proportionate and that the financial instrument meets the target market's objectives and needs.

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) 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 such data 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) 1286/2014, shall do 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 letter (b), shall include a comparison with the relevant benchmark, when available, on costs and performance published by ESMA in accordance with paragraph 9.

An investment firm which offers or recommends a financial instrument shall not offer or recommend that financial instrument to retail clients, where the financial instrument, together with costs of services incurred by the client in order to purchase that instrument, deviate from the relevant benchmark, unless that investment firm has performed additional testing and further assessments in which it has been established that costs and charges are justified and proportionate and that the financial instrument meets the target market's objectives and needs. Where no relevant benchmark exists for a financial instrument, an investment firm shall not offer or recommend the financial instrument unless it has established, through testing and assessment, that the costs and charges are justified and proportionate and that the financial instrument meets the target market's objectives and needs.

(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) 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 data 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) 1286/2014, manufactured by a manufacturer that does not fall under the reporting obligation laid down in paragraph 2 or any other equivalent reporting obligation, shall also 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 objective 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) ESMA, after having consulted EIOPA and the competent authorities, 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, also 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, also 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 shall be empowered to adopt delegated acts in accordance with Article 89 to specify:

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

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

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

(a) the content and type of data 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 [9 months] after adoption of delegated act referred to in paragraph 11.

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

9. The following Article 16b is inserted:

'Article 16b

Exemptions from product governance requirements

An investment firm shall be exempted from the requirements set out in the Article 16a(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.'

10. The following Article 20a is inserted:

'Article 20a

Procedure to address unauthorised activities offered through digital means

(1) Member States shall ensure that where a natural or legal person is not authorised under Article 5(1), and provides investment services or activities online targeting clients within its territory or a competent authority has reasonable grounds to suspect that that entity provides such services, the competent authority shall take 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 powers referred to in Article 69(2) of this Directive. Any such steps shall respect the principles of cooperation between Member States set out in Chapter II of the Directive.

(2) Member States shall provide that competent authorities publish any decision imposing a measure taken pursuant to paragraph 1, in compliance with Article 71. The publication shall display whether the decision is taken on the basis of an ascertained violation or on that of a suspicion based on reasonable grounds of violation of the provisions under this Directive.

Competent authorities shall inform ESMA of any such decision referred to in paragraph 2 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 entities concerned and the types of services or products provided. The list shall be accessible to the public through a link on ESMA's website.′

11. Article 21 is amended as follows:

(a) The following paragraph 3 is added:

'3. ESMA or the competent authority of any host Member State on the territory of which a firm is active may at any time 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.'

(b) the following paragraph 4 is added:

'4. In the case of justified concerns about negative effects on investors, 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:

'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 in Article 25a.'

(b) The following paragraph 1a is added:

'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:

(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 instrument(s) among financial instruments identified as suitable to the client pursuant to Article 25a(2) and offering similar features, and

(c) to recommend, among the range of financial instruments identified as suitable to the client pursuant to Article 25a(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 introductory paragraph is replaced by the following:

'2. Investment firms which manufacture financial instruments for sale to clients shall ensure that those financial instruments are designed to meet the needs of an identified target market of end clients within the relevant category of clients, the strategy for distribution of the financial instruments, including in terms of marketing communication and marketing practices, is compatible with the identified target market, and the investment firm takes reasonable steps to ensure that the financial instrument is distributed to the identified target market.'

(d) In paragraph 4, the introductory paragraph is replaced by the following:

'4. 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:'

(e) In paragraph 4, point (a), the following points 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 under article 25(a)(4) and cost-efficient financial instruments only;

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

(f) In paragraph 4, point (b) is 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;'

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

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

(h) In paragraph 4, the following point (d) is added:

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

- the Member State in which the head office of the investment firm and, where appropriate, the branch offering the service is/are located; and
- the relevant national competent authority of such investment firm or where relevant, of such branch.’

(i) In paragraph 4, the subparagraphs 2, 3 and 4 are deleted;

(j) paragraph 5 is amended as follows:

(i) In the first sentence, ‘and 9’ is deleted.

(ii) The second sentence is replaced by the following:

‘Notwithstanding any requirement to provide information in a standardised format, Member States may require such information to be provided in a standardised format.’

(k) the following paragraph 5b is 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:

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

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

(l) The following paragraph 5c is inserted:

‘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 [1 year after the entry into force of the amending Directive], develop, and update periodically, guidelines on the concept of particularly risky financial instruments in order to assist investment firms and relevant competent authorities in identifying particularly risky financial instruments, taking due account of the specificities of the different types of instruments.

ESMA shall be empowered to 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 1 year 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 Articles 10 to 14 of Regulation (EU) No 1095/2010.

ESMA shall monitor the consistent application of risk warnings throughout the Union. In case of inconsistencies or concerns regarding the application of the methodology by investment firms or the use of such risk warnings, or in cases of observed absence of such risk warnings for certain risky financial instruments in Member States that may have a material impact on the investor protection. ESMA, after consulting the relevant competent authorities, shall be empowered to impose the use of risk warnings by investment firms.'

(m) 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 subparagraph 7(a) to well-diversified, cost-efficient and non-complex financial instruments. Before accepting such service, the retail client shall be duly informed about the possibility and conditions to get access to a standard investment advice and the associated benefits and constraints.'

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

(o) the following paragraph 11a is inserted:

'11a. Where an investment firm provides, on its own initiative, personal recommendation(s) to a retail client or potential retail client in respect of one or more transactions relating to financial instruments, it cannot be deemed, by contractual clause or disclaimer, that the client acts on the basis of its own initiative only when sending an order to execute such transaction(s).'

(p) in paragraph 13, 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 Article 24a is inserted:

'*Article 24a*
Inducements

(1) Member States shall ensure that when providing portfolio management, the investment firm shall not pay or receive any fee or commission, or provide or

be 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) When providing reception and transmission of orders or execution of orders to or on behalf of retail clients, the investment firm shall not pay or receive any fee or commission, or provide or be 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 and/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 an investment firm providing reception and transmission of orders or execution of orders, where such firm also provides investment advice on a non-independent basis relating to the same transaction.

(4) The prohibitions contained in 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 under points 6 and 7 of Section A of Annex I, when the investment firm also provides any of the investment services referred to in paragraph 2 to retail clients and relating to the financial instruments subject to the placing or underwriting service(s).

This paragraph shall not apply in relation to financial instruments that fall under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) 1286/2014.

(5) The prohibitions contained in paragraphs 1 and 2 shall not apply to the minor non-monetary benefits of a value below EUR 100 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 transposition of Directive (EU) xxx and after consulting ESMA and EIOPA, the Commission shall conduct an assessment of the effects of third-party payments on retail investors, in particular in view of the conflict of interest and as regards the availability of independent advice, and shall evaluate the impact of the relevant provisions of Directive (EU) XXX on it. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.'

14. The following Article 24b is inserted:

'Article 24b

Information on costs, associated charges and third-party payments

(1) In good time prior to the provision of any investment service(s) and/or ancillary service(s) to, or the conclusion of any transaction on financial instruments with, clients or potential clients, investment firms shall provide those clients or potential clients with appropriate information, in the relevant format, on all costs, associated charges and third-party payments related to those services, financial instruments and/or transactions.

The information on those costs, associated charges and third-party payments shall include:

(a) all costs and associated charges charged by the investment firm, 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, and

(d) how the client may pay for them.

The information on all costs and associated charges shall be aggregated to allow the client to understand the overall cost, of the financial instrument(s) as well as the cumulative effect on return of the investment. The overall cost shall be expressed in monetary terms and percentages on a compounded basis for the expected holding period. Where the client so requests, an itemised breakdown shall be provided.

The third-party payment(s) paid or received by the investment firm in connection with the investment service provided to the client shall be itemised separately. The purpose of such third-party payment as well as the expected compounded impact on the return shall be explained in a standardised and 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 must be clearly disclosed to the client in a manner that is comprehensible, accurate and understandable for an average retail client.

(2) After having conducted consumer and industry testing and after having consulted EIOPA, ESMA shall develop draft regulatory technical standards to specify:

(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, and

(b) The standard terminology and related explanations to be used by investment firms for the disclosure on any costs, associated charges and third-party payments, received or paid by the firm, to be charged directly or indirectly by the firm to the client or potential client in connection with the provision of any investment service(s) and/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 the draft regulatory technical standards referred to in this paragraph to the Commission by [OJ: insert date 1 year after the date of entry into force].

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

Where specific terminology or format for such disclosure on costs and charges are already prescribed by any other EU legislative act, the use of such specific terminology and format shall prevail.

(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 both of the following conditions are met:

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

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

In addition to the requirements of the third subparagraph, 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 provide its retail client with an annual statement on costs, associated charges, third party payments, payments received by the client, and performance, expressed in monetary terms and percentages, that shall ensure that the retail client gets a global overview on at least:

(a) the total costs and associated charges paid or borne annually by the retail client for the total portfolio, with a split between the costs associated with the provision of any investment and/or ancillary services by the investment firm to the retail client, the costs associated to the manufacturing and managing of the financial instruments held by the client and if any, the payments received by the firm from, or paid to, third parties in connection with the investment services provided to the client,

(b) the total amount of dividends, interest and other payments received annually by the retail client in connection with their portfolio,

(c) The total taxes, including any stamp duty, transactions tax, withholding tax and any other taxes where levied by the investment firm, with a split per tax, borne by the retail client in connection with their portfolio,

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

(e) the net annual performance of each financial instrument held by the retail client together with the net annual performance of the total portfolio held by the retail client.

Upon request, the client shall be entitled to receive each year a detailed breakdown of all costs, associated charges and third party payments paid or borne annually by them per financial instrument owned during the relevant period as well as a detailed breakdown of the dividends, interests and other payments received annually per financial instrument owned during the relevant period.

(5) 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 the retail client with an annual statement on all costs, associated charges and third party payments related to the transactions executed by the investment firm for that client during the relevant annual period. This annual statement shall include, expressed in monetary terms and percentages:

(a) the total costs and associated charges linked to the manufacturing and managing of all financial instrument(s) commercialised by the investment firm to the retail client,

(b) the total costs and associated charges linked to the investment and/or ancillary service(s) provided by the investment firm to the retail client, and

(c) any third-party payments received or paid by the investment firm in connection with the investment service provided by the firm to the retail client.

Upon request, the client shall be entitled to receive a detailed annual breakdown of all costs, associated charges and third-party payments paid or borne by them during the relevant period in connection with their transactions on financial instruments with or via the intermediation of the investment firm.

(6) Where providing exclusively a service of safekeeping and administration of financial instruments for the account of the retail client, the investment firm shall provide the retail client with an annual statement on costs, associated charges, payments received by the client and value for the instrument(s) held for that client, stating, expressed in monetary terms and percentages , at least:

(a) The total costs and associated charges borne annually by the client,

(b) the total amount of dividends, interest and/or other payments received annually by the retail client in connection with their financial instrument(s),

(c) The total taxes, including any stamp duty, transactions tax, withholding tax and/or any other taxes levied by the investment firm, with a split per tax, borne by the retail client in connection with their financial instrument(s),

(d) The market, or when the market value is not available the estimated value, of the financial instrument(s)

Upon request, the client shall be entitled to receive each year a detailed breakdown of all costs paid or borne annually by them per financial instrument owned during the relevant period as well as a detailed breakdown of the dividends, interests and other payments received annually per financial instrument owned during the relevant period.

(7) All statements mentioned in paragraphs 4, 5 and 6 shall express the breakdown of the costs associated charges and third party payments per annum as well as on a compounded basis since the start of the relevant client relationship.

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 as described under paragraph 2 of this Article.

(8) The annual statement referred to in paragraphs 4, 5, 6 and 7 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, 5 ,6 and 7 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.

15. The following Article 24c is inserted:

'Article 24c

Marketing Communications and Practices

(1) Marketing communications shall be clearly identifiable as such and shall clearly identify the investment firm(s) responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by the investment firm.

(2) Marketing communications and practices shall be developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of the presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target audience and where relating to a specific financial instrument to the target market identified pursuant to Article 24(2).

All marketing communications shall include and disclose, in a prominent and concise way, the essential characteristics of the financial instruments or the investment service(s) and related ancillary service(s) which they referred to.

The presentation of the essential characteristics of marketing communications shall ensure that specific or potential retail investors can easily understand the key features of the financial instrument as well as the main risks associated with them.

(3) 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 such marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified in the target market.

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

(4) Investment firms shall have adequate controls in place, to ensure compliance with obligations on marketing communications and practices under this Directive and relevant delegated acts.

(5) Investment firms shall ensure that annual reports are made to the firm's management body on the use of marketing communications and practices, the compliance with relevant obligations on marketing communications and practices under this Directive and on any related issues and proposed solutions.

(6) Member States shall ensure that national competent authorities are empowered to take timely and effective action in relation to any marketing communication or marketing practice considered to not comply with requirements under paragraphs 1 and 2 of this Article.

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

Such records shall be retrievable by the investment firm upon request of the competent authority. They should include the content of the marketing communication, details about the medium used for the marketing communication, the date and duration of the marketing communication including relevant starting and end times, the targeted client segment(s) or profiling determinants, the Member State(s) where the marketing communication is made available, and the identity of any third party involved in the dissemination of the marketing communication.

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.

(8) The Commission shall be empowered to adopt a delegated act in accordance with Article 89 to supplement this Directive by specifying:

(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 the presentation of advantages and risks, and appropriate in terms of content and distribution channels for the target audience or, where applicable, the target market.'

16. Article 25 is replaced by the following:

‘ Article 25

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 Article 24 and Article 25a 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 shall be empowered to adopt a delegated act to review, where necessary, the list set out in Annex V.’

17. The following Article 25a is inserted:

‘Article 25a

Assessment of suitability and appropriateness and reporting to clients

(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 such assessment 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 that i) the provision of inaccurate or incomplete information shall impact negatively the quality of the assessment to be made by the investment firm and ii) 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 client or potential 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, sub-paragraph 2 and the format and content of the report referred to in paragraph 1, sub-paragraph 3

ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 1 year 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 sub-paragraph below, 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 client or potential client's knowledge and experience about the considered financial instruments or investment services or on the 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, 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 negative appropriateness warning 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 implementing technical standards to determine the format and content of the warning referred to in paragraph 3, subparagraph 3

ESMA shall submit the draft implementing technical standards to the Commission by [OJ: insert date 1 year after the date of entry into force].

Power is conferred to the Commission to adopt those implementing technical standards as referred to above in the fifth subparagraph of this paragraph in accordance with Articles 15 of Regulation. (EU) No 1095/2010.

(4) Member States shall allow investment firms when providing investment services that only consist of execution or reception and transmission of client orders with or without ancillary services, excluding the granting of credits or loans as specified in Section B.1 of Annex I that do not comprise of existing credit limits of loans, current accounts and overdraft facilities of clients, to provide those investment services to their clients without the need to obtain the information or make the determination provided for in paragraph 3 where all the following conditions are met:

(a) the services relate to any of the following financial instruments:

(i) shares admitted to trading on a regulated market or on an equivalent third-country market or on a MTF, where those are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative;

(ii) bonds or other forms of securitised debt admitted to trading on a regulated market or on an equivalent third country market or on a MTF, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;

(iii) money-market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;

(iv) shares or units in UCITS, excluding structured UCITS as referred to in the second subparagraph of Article 36(1) of Regulation (EU) No 583/2010;

(v) structured deposits, excluding those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term;

(vi) other non-complex financial instruments for the purpose of this paragraph.

For the purpose of this point, a third-country market shall be considered to be equivalent to a regulated market if the requirements and the procedure laid down under the third and the fourth subparagraphs are fulfilled.

At the request of the competent authority of a Member State, the Commission shall adopt equivalence decisions in accordance with the examination procedure referred to in Article 89a(2), stating whether the legal and supervisory framework of a third country ensures that a regulated market authorised in that third country complies with legally binding requirements which are, for the purpose of the application of this point, equivalent to the requirements resulting from Regulation (EU) No 596/2014, from Title III of this Directive, from Title II of Regulation (EU) No 600/2014 and from Directive 2004/109/EC, and which are subject to effective supervision and enforcement in that third country. The competent authority shall indicate why it considers that the legal and supervisory framework of the third country concerned is to be considered equivalent and shall provide relevant information to that end.

Such third-country legal and supervisory framework may be considered equivalent where that framework fulfils at least the following conditions:

(i) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;

(ii) the markets have clear and transparent rules regarding the admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;

(iii) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and

(iv) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.

(b) the service is provided at the initiative of the client or potential client;

(c) the client or potential client has been clearly informed that in the provision of that service the investment firm is not required to assess the appropriateness of the financial instrument or service provided or offered and that therefore he 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 investment firm complies with its obligations under Article 23.

ESMA shall develop draft implementing technical standards to determine the format and content of warning referred to in subparagraph c)

ESMA shall submit the draft implementing technical standards to the Commission by [OJ: insert date 1 year after the date of entry into force].

Power is conferred to the Commission to adopt those implementing technical standards as referred to above in accordance with Articles 15 of Regulation. (EU) No 1095/2010.

(5) The investment firm shall establish a record that includes the document or documents agreed between the investment firm and the client that set out the rights and obligations of the parties, and the other terms on which the investment firm will provide services to the client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

(6) The investment firm shall provide the client with adequate reports on the service provided in a durable medium. Those reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

When providing investment advice, the investment firm shall, before the transaction is made, provide the client with a statement on suitability in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other provided characteristics of the retail client. 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.

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 suitability statement, the investment firm may provide the written statement on suitability in a durable medium immediately after the client is bound by any agreement, provided both the following conditions are met:

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

(b) the investment firm has given the client the option of delaying the transaction in order to receive the statement on suitability in advance.

Where an investment firm provides portfolio management or has informed the client that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the investment meets the client's preferences, objectives and other characteristics of the retail client,

(7) If a credit agreement relating to residential immovable property, which is subject to the provisions concerning creditworthiness assessment of consumers laid down in Directive 2014/17/EU of the European Parliament and the Council ([1]), has as a prerequisite the provision to that same consumer of an investment service in relation to mortgage bonds specifically issued to secure the financing of and having identical terms as the credit agreement relating to residential immovable property, in order for the loan to be payable, refinanced or redeemed, that service shall not be subject to the obligations set out in this Article.

(8) 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 paragraphs 1 to 6.b 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 point (a)(vi) of paragraph 4 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 service(s) 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.

(9) ESMA shall adopt by 3 January 2016 guidelines specifying criteria for the assessment of knowledge and competence required under paragraph 1.

(10) ESMA shall develop by 3 January 2016, and update periodically, guidelines for the assessment of:

(a) financial instruments incorporating a structure which makes it difficult for the client to understand the risk involved in accordance with points (a)(ii) and (a)(iii) of paragraph 4;

(b) structured deposits incorporating a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term, in accordance with point (a)(v) of paragraph 4.

(11) ESMA may develop guidelines, and update them periodically, for the assessment of financial instruments being classified as non-complex for the purpose of point (a)(vi) of paragraph 4, taking into account the delegated acts adopted under paragraph 8.'

18. 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 number and categories of clients corresponding to the services and activities referred to in point (b), 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 means 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) In order to ensure consistent application of this Article, 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 1 year after the date of entry into force].

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 1095/2010."

(4) To ensure uniform conditions of application of paragraphs 1 and 3, ESMA shall develop draft implementing technical standards specifying the data standards and formats, methods and 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 1 year after the date of entry into force].

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 1095/2010.

(5) Based on the information communicated pursuant to paragraph 2, ESMA shall publish every year a report containing 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.'

19. Article 69, paragraph 2, is amended as follows:

(a) The following point (ca) is added:

'(ca) carry out mystery shopping activities;'

(b) The following point (ka) is added:

'(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 for believing that this Directive or Regulation (EU) No 600/2014 have been infringed. When making use of such powers, the competent authority shall notify ESMA. Where such practices or communications are used in more than one Member State, upon request of at least one competent authority, ESMA shall coordinate actions taken by competent authorities pursuant to this point;'

(c) The following point (v) is added:

'(v) take all necessary measures 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; or

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

including by requesting a third party or other public authority to implement such measures, whether on a temporary or permanent basis;'

(d) The following point (w) is added:

'(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.'

20. Article 70, paragraph 3(a) is amended as follows:

(a) The following point (xxxvii) is added:

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

(b) The following point (xxxviii) is added:

'(xxxviii) Article 24(5a) to (5d) and (11a);'

(c) The following point (xxxxix) is added:

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

(d) The following point (xxxx) is added:

'(xxxx) Article 24b(1) and (3) to (6);'

(e) The following point (xxxxi) is added:

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

(f) The following point (xxxxii) is added:

'(xxxxii) Article 25a(1), (2), the first to the fourth subparagraph of (3), the first subparagraph of (4),(5) to (7), [8];'

(g) The following point (xxxxiii) is added:

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

21. Article 73, paragraph 1, is amended as follows:

(a) Subparagraph 1 is replaced by the following:

'1. Member States shall ensure that competent authorities establish effective mechanisms to enable reporting of potential or actual infringements of the provisions 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) 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 investment services or activities made available through digital or other means, which they believe to

be in breach of Union Law or national law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via this reporting form;'

22. In the Article 86 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. Where the competent authority of the host Member State (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 is providing 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 added:

'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 where the same investment firm causes concerns or infringements similar to those referred to in the findings of the initiating authority may adopt similar 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 point (a) of paragraph 1 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 of this Directive.'

23. 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.

(2) Paragraph 1 is without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.

(3) The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.

(4) Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.

(5) Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010.

(6) In the event of disagreement within the platform and where there are serious concerns about negative effects on investors or about the content of an action or inaction to be taken in relation to an investment firm, ESMA may decide to initiate and coordinate on-site inspections. It shall invite the competent authority of the home Member State as well as other relevant competent authorities of the collaboration platform to participate in such on-site inspections.'

24. 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 considered marketing communication.'

25. In Article 89, paragraphs 2 to 5 are replaced by the following:

'2. 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 16a(11), Article 23(4), Article 24(13), Article 24c(8), Article 25a(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), 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

16a(11), Article 23(4), Article 24(13), Article 24c(8), Article 25a(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. 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 16a(11), Article 23(4), Article 24(13), Article 24c(8), Article 25a(8), Article 27(9), Article 28(3), Article 30(5), Article 31(4), Article 32(4), Article 33(8), 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.'

26. Annex II section II.1 is amended as follows:

(a) The first sentence of subparagraph 4 is replaced by:

'The fitness test applied to managers and directors of entities authorised under the present Directive or other EU Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge.'

(b) The second bullet point in subparagraph 5 is replaced by:

"the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 250 000 on average during the last 3 years,"

(c) The third bullet point in subparagraph 5 is replaced by:

'the client works or has worked in the financial sector or undertaken capital market activities requiring to buy and sell financial instruments and/or to manage a portfolio of financial instruments for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.'

(d) A new fourth bullet point is added to subparagraph 5 reading:

'the client can provide the firm with proof of a recognised education or training that evidences his/her understanding of the relevant transactions or services envisaged and his/her ability to evaluate adequately the risks.'

(e) New subparagraphs 7 and 8 are added at the end reading:

‘Where the client is a legal entity, as a minimum, two of the following criteria shall be met:

- balance sheet total: EUR 10 000 000
- net turnover: EUR 20 000 000
- own funds: EUR 1 000 000

The investment firm shall assess that the legal representative of that legal entity or the person responsible for the investment transactions on behalf of that legal entity, understands the relevant transactions or services envisaged, is capable of making investment decisions in line with the legal entity’s objectives, needs and financial capacity and is able to evaluate adequately the risks.’

27. Annex V is added as follows:

‘Annex V

Minimum professional knowledge and competence requirements
(as referred to in Article 25(2))

(a) understand the key characteristics, risks and features of the financial instruments being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions;

(b) understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;

(c) understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;

(d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;

(e) understand the impact of macro-economic developments, national/regional/ global events on financial markets and on the value of financial instruments being offered or recommended to clients;

(f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;

(g) understand the general implications of the main elements of the financial regulatory framework;

(h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;

(i) understand specific market structures for the type of financial instruments offered or recommended to clients;

(j) understand the valuation principles for the type of financial instruments offered or recommended to clients;

(k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;

(l) understand the concept of sustainable investment and how to consider and integrate sustainability factors and client's sustainability preferences into the advisory processes.'

Article 2

Amendments to Directive (EU) 2016/97 [IDD]

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

1. Article 2, paragraph 1, is amended as follows:

(a) In subparagraph 4, point (c) is amended as follows:

'(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) subparagraph 8 is amended as follows:

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

(c) the following subparagraphs (19), (20), (21), (22) and (23) are added:

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

(20) 'marketing communication' means any disclosure of information other than disclosure required by Union or national law, or financial education material compliant with Article 16b under this Directive:
(a) made by an insurance undertaking or insurance intermediary or a third party remunerated or incentivised through non-monetary compensation by the insurance undertaking or insurance intermediary;

(b) to persons;

(c) in any form and by any means; and

(d) aiming to directly or indirectly promote insurance products or entice investment(s) in one or several insurance-based investment products.

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

insurance firm or insurance intermediary, to directly or indirectly disseminate marketing communications, to accelerate or improve the reach and effectiveness of the marketing communications, or in any way promote the insurance undertaking's or insurance intermediary's insurance based investment products;

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

2. In Article 3, the following is amended:

(a) A new paragraph 4a is inserted as follows:

'4a. Home Member States shall ensure that registration of insurance, reinsurance and ancillary insurance intermediaries is made subject to the fulfilment of the relevant requirements laid down in Article 10.

The validity of the registration shall be subject to a regular review by the competent authority.

Home Member States shall ensure that insurance, reinsurance and ancillary insurance intermediaries who cease to fulfil the requirements laid down in Article 10 are removed from the register. 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 inform EIOPA about the reasons justifying such decision.'

(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.'

3. Article 5 has been amended as follows:

(a) In paragraph 1, the first, second, third and fourth subparagraphs are replaced by the following:

'1. Where the competent authority of the host Member State 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, it shall communicate those considerations to the competent authority of the home Member State.

Information that such a communication has been made shall be transmitted to EIOPA. EIOPA shall transmit 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. The Commission and EIOPA shall be informed of such measures without undue delay, as well as all competent authorities of the host Member States where the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services.

After assessing the information received pursuant to the first subparagraph, the competent authority of the home Member State shall, where applicable, and, if so, 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, take appropriate measures to remedy the situation. It 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 all necessary information on any measure taken to the competent authority of the host Member State, as well as 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.

Where, despite the measures taken by the competent authority of the home Member State or if no measure has been taken, 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 informing 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 has been replaced by the following:

‘Any measure adopted by the competent authorities of the host Member State under this Article shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document .and notified without undue delay to the competent authority of the home Member State as well as all competent authorities of the host Member States where the insurance, reinsurance or ancillary insurance intermediary is acting under the freedom to provide services, to EIOPA and to the Commission .’;

(c) a new 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 of this Directive.'

4. the following Article 9a is inserted:

'Article 9a

Reporting of cross-border activities

(1) Member States shall require that insurance distributors report the following information annually to the competent authority of their home Member State where they pursue 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 number of customers;

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

Competent authorities shall communicate to EIOPA all information collected from insurance distributors.

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

(3) In order to ensure consistent application of this Article, EIOPA shall develop draft regulatory technical standards on the details of the information referred to in paragraph 1 that is to be reported by insurance distributors to competent authorities.

EIOPA shall submit these draft regulatory technical standards to the Commission by [OJ: insert date 1 year after the date of entry into force].

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.

(4) To ensure uniform conditions of application of paragraphs 1 and 3, EIOPA shall develop draft implementing technical standards specifying the data standards and formats, methods and arrangements, frequency and starting date for the information to be reported.

EIOPA shall submit those draft implementing technical standards to the

Commission by [OJ: insert date 1 year after the date of entry into force].

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 statistics on the insurance distribution activities carried out in the Union through the freedom to provide services, as well as an analysis of trends.'

5. Article 10 is replaced by the following:

'Article 10

Professional requirements

(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 and maintain and update that 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.

(2) For the purpose of paragraph 1, Member States shall require insurance and reinsurance intermediaries to ensure and demonstrate to competent authorities on request that natural persons giving advice to clients on behalf of the insurance and reinsurance undertakings and insurance intermediaries possess and maintain at least the knowledge and competence set out in Annex V and undertake at least 15 hours of professional training or development per year.

(3) 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 shall be proven by a certificate.

(4) Member States shall adjust the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance distributors and the products distributed, particularly in the case of ancillary insurance intermediaries. Member States may require that in the cases referred to in the third subparagraph of Article 3(1), and with regard to the employees of insurance or reinsurance undertakings who are engaged in insurance or reinsurance distribution, the insurance or reinsurance undertaking or intermediary is to verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in paragraph 1 and, if need be, is to provide such intermediaries with training or professional development means which correspond to the requirements concerning the products sold by the intermediaries.

(5) Member States need not apply the requirements referred to in paragraph 1 and in the first subparagraph of this paragraph to all the natural persons working in

an insurance or reinsurance undertaking, or insurance or reinsurance intermediary, who pursue the activity of insurance or reinsurance distribution, but Member States shall ensure that the relevant persons within the management structure of such undertakings who are responsible for distribution in respect of insurance and reinsurance products and all other persons directly involved in insurance or reinsurance distribution demonstrate the knowledge and ability necessary for the performance of their duties.

(6) Insurance and reinsurance intermediaries shall demonstrate compliance with the relevant professional knowledge and competence requirements laid down in Annex I.

(7) The Commission shall be empowered to adopt a delegated act to review, where necessary, the list set out in Annex I.';

6. The following Article 10a is inserted:

'Article 10a

Organisational requirements

(1) Natural persons working in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary, who pursue insurance or reinsurance distribution shall be of good repute. As a minimum, they shall have a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

Member States may, in accordance with the third subparagraph of Article 3(1), allow the insurance or reinsurance distributor to check the good repute of its employees and, where appropriate, of its insurance or reinsurance intermediaries.

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons who work in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary provided that those natural persons are not directly involved in insurance or reinsurance distribution. Member States shall ensure that the persons within the management structure responsible for, and any staff directly involved in, insurance or reinsurance distribution fulfil that requirement.

As regards ancillary insurance intermediaries, Member States shall ensure that the persons responsible for ancillary insurance distribution fulfil the requirement referred to in the first subparagraph.

(2) 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.

(3) Member States shall require that ancillary insurance intermediaries hold professional indemnity insurance or comparable guarantees at a level established by Member States taking into account the nature of the products sold and the activity carried out.

(4) Member States shall take all necessary measures to protect customers against the inability of the insurance, reinsurance or ancillary insurance intermediary to transfer the premium to the insurance undertaking or to transfer the amount of claim or return premium to the insured.

Such measures shall take any one or more of the following forms:

(a) provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them;

(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;

(c) a requirement that customers' monies be transferred via strictly segregated customer accounts and that those accounts not be used to reimburse other creditors in the event of bankruptcy;

(d) a requirement that a guarantee fund be set up.

(5) EIOPA shall regularly review the amounts referred to in paragraphs 4 and 6 in order to take account of changes in the European index of consumer prices as published by Eurostat. The first review shall take place by 31 December 2017 and successive reviews shall take place every five years thereafter.

EIOPA shall develop draft regulatory technical standards which adapt the base amount in euro referred to in paragraphs 4 and 6 by the percentage change in the index referred to in the first subparagraph of this paragraph over the period between 1 January 2013 and 31 December 2017 or between the last review date and the new review date and rounded up to the nearest multiple of EUR 10.

EIOPA shall submit those draft regulatory technical standards to the Commission by 30 June 2018 and the successive draft regulatory technical standards every five years thereafter.

Power is conferred on the Commission to adopt the regulatory technical standards referred to in the second and third subparagraphs of this paragraph in

accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

(6) To ensure compliance with the requirements in paragraphs 1, 2 and 3, insurance and reinsurance undertakings shall approve, implement and regularly review their internal policies and appropriate internal procedures.

Insurance and reinsurance undertakings shall identify a function to ensure the proper implementation of the endorsed policies and procedures.

Insurance and reinsurance undertakings shall establish, maintain and keep up-to-date records of all the relevant documentation regarding the application of paragraphs 1, 2 and 3. Insurance and reinsurance undertakings shall, upon request, make available the name of the person responsible for that function to the home Member State competent authority.';

7. Article 12 is amended as follows:

(a) in paragraph 3, a second subparagraph is added:

'The powers referred to in sub-paragraph 1 shall include, at least, the following powers to:

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

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

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

(d) carry out mystery shopping activities;

(e) require existing recordings of telephone conversations or electronic communications or other data traffic records held by an insurance undertaking or an insurance distributor regulated by this Directive or by Directive 2009/138/EC;

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

(g) require the temporary prohibition of professional activity;

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

(i) refer matters for criminal prosecution;

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

(k) 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. When making use of such powers, the competent authority shall notify EIOPA. Where such practices or communications are used in more than one Member State, upon request of at least one competent authority,

EIOPA shall coordinate actions taken by competent authorities pursuant to this point;

(l) 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;

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

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

(o) issue public notices;

(p) require, in so far as permitted by national law, existing data traffic records held by a telecommunication operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to an investigation into infringements of this Directive or of Directive 2009/138/EC;

(q) suspend the distribution of an insurance-based investment product where the insurance undertaking or insurance distributor has not developed or applied an effective product approval process or otherwise failed to comply with Article 25 of this Directive;

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

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

(t) 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.';

(b) a new paragraph 4 is added:

‘4. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.’

8. a new Article 12a is 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, in accordance with this Directive and Regulation (EU) No 1094/2010.

(2) The competent authorities shall, without undue delay, provide EIOPA with all information necessary to carry out its duties under this Directive and in accordance with Articles 35 and 36 of Regulation (EU) No 1094/2010.';

9. a new Article 12b is inserted:

'*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.

(2) Paragraph 1 is without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.

(3) The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.

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

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

(6) In the event of disagreement within the platform and where there are serious concerns about negative effects on policyholders or about the content of an

action or inaction to be taken in relation to an insurance or reinsurance distributor, EIOPA may decide, on its own initiative, to initiate and coordinate on-site inspections. It shall invite the competent authority of the home Member State as well as other relevant competent authorities of the collaboration platform to participate in such on-site inspections.';

10. 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 where the insurance or reinsurance distributor operates on a cross-border basis. Those procedures shall allow customers and other interested parties to file complaints and receive replies in the same language in which the communication material and any contractual documents were provided. In all cases, complainants shall be registered and shall receive replies within 40 working days.';

11. A new Article 16a is 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.';

12. a new Article 16b is inserted:

'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 considered marketing communication.';

13. in Article 17, paragraph 2 is replaced by the following:

'2. Without prejudice to Directive 2005/29/EC of the European Parliament and of the Council, 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.';

14. Article 18 is replaced by the following:

'*Article 18*

General information to be provided to the customer

Member States shall ensure that:

(1) 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) its identity the name of the insurance intermediary, its legal form and address and the information 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) its identity the name of the insurance undertaking, its legal form and address, and the information 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.

15. Article 19 is replaced by the following:

‘Article 19

Disclosures

(1) 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:

(a) whether it has a holding, direct or indirect, representing-10 % or more of the voting rights or of the capital in a given insurance undertaking;

(b) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing 10 %

or more of the voting rights or of the capital in the insurance intermediary;

(c) in relation to insurance products other than insurance-based investment products, whether:

(i) it gives advice on the basis of a fair and personal analysis;

(ii) it is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, in which case it is to provide the names of those insurance undertakings; or

(iii) it is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair and personal analysis, in which case it is to provide the names of the insurance undertakings with which it may and does conduct business.

(d) the nature of the remuneration received in relation to the insurance contract, in particular to the insurance contract, 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).

(2) Where the fee is payable directly by the customer, the insurance intermediary shall inform the customer of the amount of the fee or, where that is not possible, of the method for calculating the fee.

(3) If any payments, other than the ongoing premiums and scheduled payments, are made by the customer under the insurance contract after its conclusion, the insurance intermediary shall also make the disclosures in accordance with this Article for each such payment.

(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.

(5) If any payments, other than the ongoing premiums and scheduled payments, are made by the customer under the insurance contract after its conclusion, the insurance undertaking shall also make the disclosures in accordance with this Article for each such payment.’

16. Article 20 is amended as follows:

(a) Paragraph 1, subparagraph 1, 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) Paragraph 3 is 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.’

(c) Paragraph 4 is replaced by the following:

‘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.’

(d) Paragraph 5 is replaced by the following:

'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 by way of a standardised insurance product information document on paper or on another durable medium.’

(e) Paragraph 8 is amended as follows:

(a) The first sentence in paragraph 8 is amended as follows:

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

(b) Point (h) is amended as follows:

'(h) the term of the contract, including the start and end dates of the contract;’

(c) Point (i) is amended as follows:

‘(i) the means of terminating the contract;’

(d) A new point (j) is added:

‘(j) the law applicable to the contract and the competent jurisdiction.’

(f) A new paragraph 9 is inserted:

‘9. For life insurance products other than insurance-based investment products, the insurance product information document shall contain the following information:

(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 arrangements 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 and the competent jurisdiction.’

(g) Paragraph 9 is renumbered 10,

(h) Renumbered paragraph 10, in the first subparagraph, the last word is amended by ‘paragraph 9’.

(i) Renumbered paragraph 10, in the second subparagraph, ‘23 February 2017’ is replaced by [DATE TBD IN ACCORDANCE TO DATE OF ADOPTION]

17. In paragraph 1 of Article 22, the following text is added:

'or with customers meeting the criteria for professional clients as defined in point (10) of Article 4(1) of Directive 2014/65/EU.'

18. Article 23 is replaced by the following:

'*Article 23*

Electronic distribution and other durable means

(1) Insurance distributors shall provide all information required to be provided by this Directive to customers in electronic format, except where the customer is a retail customer who has requested receiving the information on paper, in which case that information shall be provided on paper, free of charge.

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

(3) Insurance distributors shall inform existing retail customers that receive the information required to be provided by this Directive on paper of the fact that they will receive that information in electronic format at least eight weeks before sending that information in electronic format. Insurance distributors shall inform those existing retail customers that they have the choice either to continue receiving information on paper or to switch to information in electronic format. Insurance distributors shall also inform existing retail customers that an automatic switch to the electronic format will occur 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 required to be provided by this Directive 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 to assist insurance distributors to design information provided in an electronic format 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:

(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.'

19. 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, as well as 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 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 ensure 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 letter f shall include a comparison with the relevant benchmark, where available, on costs and performance published by EIOPA in accordance with paragraph 1g.

1a. A manufacturer shall not approve an insurance-based investment product which deviates from the relevant benchmark referred to in paragraph 1g, unless that manufacturer has performed additional testing and further assessments and established that costs and charges are nevertheless justified and proportionate, and that the product meets the target market's objectives and needs. 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.

1b. Insurance undertakings, as well as 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, as well as 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 include all the elements referred to in paragraph 1, third subparagraph, points f and g and any further 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.

1c. Insurance undertakings as well as insurance intermediaries which manufacture insurance-based investment products shall report to their home authorities 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 those data to EIOPA without undue delay.

1d. 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 the second subparagraph of paragraph 1b and to understand the characteristics and identified target market of each insurance product.

Insurance intermediaries or insurance undertakings distributing insurance-based investment products shall do the following:

(a) make sure that they obtain and fully understand the information referred to in paragraph 1b 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 letter (c) shall include, where available, a comparison with the relevant benchmark on costs and performance published by EIOPA in accordance with paragraph 1g.

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.

1e. An insurance intermediary or insurance undertaking which distributes insurance-based investment products shall not advise on or propose an insurance-based investment product to retail customers where the product deviates from the relevant benchmark, unless that insurance intermediary or insurance undertaking has performed further assessments in which it has been established that costs and charges are justified and proportionate and that the product meets the target market's objectives and needs. Where no relevant benchmark exists for an insurance-based investment product, distributors shall not advise on or propose the product unless they have performed assessments in which it has been established that the costs and charges are justified and proportionate and that the product meets the target market's objectives and needs.

1f. 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 objective reasons justifying a deviation from the benchmark_

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

1g. 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 these benchmarks.

(2) The Commission shall be empowered to adopt 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 1g;

(b) the criteria and elements 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.

2a. EIOPA, after having consulted ESMA and the competent authorities and after industry testing, and taking into consideration the methodology referred to in paragraph 2(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 1c, 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 1c.

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.

(3) 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.

(4) This Article shall not apply to insurance products which consist of the insurance of large risks.

20. Article 26 is amended as follows:

(a) The first paragraph is replaced by the following:

'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.

(b) A second subparagraph is inserted:

'Insurance-based investment products may only be distributed by'

21. The following Article 26a is inserted:

'Article 26a

Marketing communications and practices

(1) By derogation from Article 17(2) marketing communications of insurance-based investment products shall be clearly identifiable as such and shall 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) Marketing communications and practices of insurance-based investment products shall be developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of the presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target audience and where relating 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 include and disclose, in a prominent and concise way, the essential characteristics of the insurance-based investment product(s) which they refer to.

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

(3) 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 such 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.

(4) Insurance undertakings and insurance intermediaries shall have adequate controls in place, to ensure compliance with obligations on marketing communications under this Article and relevant delegated acts.

(5) Insurance undertakings and insurance distributors shall ensure that annual reports are made to their management body on the use of marketing communications and practices, the compliance with relevant obligations on marketing communications and practices under this Article and on any related issues and proposed solutions.

(6) Member States shall ensure that national competent authorities are empowered to take timely and effective action in relation to any marketing communication or marketing practice considered to not comply with requirements under paragraphs 1 and 2 of this Article.

(7) Records to be kept by insurance undertakings and insurance distributors shall include all marketing communications of insurance-based investment products, by the insurance undertaking or insurance distributor or by any third party remunerated or incentivised through non-monetary compensation.

Such records shall be retrievable by the insurance undertaking or insurance distributor upon request of the competent authority. They should include the content of the marketing communication, details about the medium used for the marketing communication, the date and duration of the marketing communication (including relevant starting and end times), the targeted customer segment(s) or profiling determinants, the Member State(s) where the marketing communication is made available, and the identity of any third party involved in the dissemination of the marketing communication.

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.

(8) The Commission shall be empowered to adopt a delegated act in accordance with Article 39 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.

22. 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.’

23. Article 29, including its title, 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, in the relevant format, about the insurance-based investment products proposed to them. That information shall include the following:

(a) when 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) XXX) and cost-efficient products only;

(v) how the recommended insurance-based investment product(s) take(s) 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 products 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 costs, associated charges and third party payments, including all costs and charges per annum and estimated on a compounded basis over the recommended holding period, expressed in monetary terms and percentages, 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. Such information shall be accompanied with 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;

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

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

The information on all costs, charges and third-party payments referred to in point d of the first subparagraph, shall be presented in aggregated form to allow the customer to understand the overall cost as well as the cumulative effect on the return of the investment. Where the customer so requests, an itemised breakdown shall be provided. The third-party payment(s) paid or received by the insurance intermediary or insurance undertaking in connection with the distribution of the insurance-based investment product shall be itemised separately.

(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.

The Annual Statement shall be made available to each 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

disclosure as required under paragraph 3 can be easily accessed and the manufacturer has evidence that the 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 for retail policyholders:

(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 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 PRIIPs KID, 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 unit-linked protection policies 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, to ensure a better understanding and comparability by retail customers and policyholders.

EIOPA shall, after consulting 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 1 year after the date of entry into force].

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

Where specific terminology or format for such disclosure on costs and charges are already prescribed by any other EU legislative act, the use of such specific terminology and format shall prevail.

(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 [1 year after the entry into force of the amending Directive], develop, and update periodically, guidelines on the concept of particularly risky insurance-based investment products in order to assist insurance intermediaries and insurance undertakings in identifying particularly risky insurance-based investment products, taking due account of the specificities of the different types of insurance-based investment products.

EIOPA shall be empowered to 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 implementing technical standards to the Commission by [OJ: insert date 1 year after the date of entry into force].

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

EIOPA shall monitor the consistent application of risk warnings throughout the Union. In case of inconsistencies or concerns regarding the application of the methodology by insurance intermediaries and insurance undertakings, the use of such risk warnings, or in cases of observed absence of such risk warnings for certain risky insurance-based investment products in Member States that may have a material impact on the investor protection, EIOPA, after consulting the relevant competent authorities, shall be empowered to impose the use of risk warnings by insurance intermediaries and insurance undertakings distributing insurance-based investment products.

24. the following Article 29a is inserted:

'Article 29a

Inducements

(1) Insurance intermediaries or insurance undertakings manufacturing insurance-based investment products or distributing such products in accordance with Article 30(3) and (4) shall not pay or receive any fee or commission, or provide or be provided with any non-monetary benefit in connection with the provision of such service, 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 value below EUR 100 or of a scale and nature such that they could not be considered to impair compliance with the insurance intermediary's or insurance undertaking's duty to act in the best interests of their customer provided they have been clearly disclosed to the customer.

Any payment or benefit which enables or is necessary for the provision of services, such as 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, is not subject to the requirements set out in the first subparagraph.

(2) Member States shall ensure that insurance intermediaries or insurance undertakings, when providing insurance-based investment products in accordance with Article 30(1), may only receive or pay fees or benefits from or to a third-party, on the condition that they 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. The existence, nature and amount of such third-party payments shall be disclosed in accordance with Article 29.

(3) Where applicable, the insurance intermediary or insurance undertaking shall also 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 distributors 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 have to 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) Without prejudice to paragraph 3 of this Article, the Commission shall be empowered to adopt 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 when carrying out insurance distribution activities with their customers;

(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 transposition of Directive (EU) xxx and after consulting ESMA and EIOPA, the Commission shall conduct an assessment of the effects of third-party payments on retail investors, in particular in view of the conflict of interest and as regards the availability of independent advice, and shall evaluate the impact of the relevant provisions of Directive (EU) XXX on it. If necessary to prevent consumer detriment, the Commission shall propose legislative amendments to the European Parliament and the Council.'

25. A new Article 29b is inserted:

'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; and

(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 paragraph 3 and offering similar features; and

(c) to recommend, among the range of insurance-based investment products identified as suitable for the customer pursuant to paragraph 3, 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 adopt 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 and the retail or professional nature of the customer.

26. Article 30 is amended as follows:

'Article 30

Assessment of suitability and appropriateness and reporting to customers

(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.

Insurance intermediaries and insurance undertakings distributing insurance-based investment products shall ensure that the purpose of the suitability or appropriateness assessment is explained to customers before any information is requested from them. The customer shall be warned that if) 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 and ii) the absence of information shall prevent the firm from determining whether the service or financial instrument envisaged is suitable or appropriate

for the customer and from providing advice. Such explanation and warning shall be provided in a standardised format, as developed by EIOPA.

Insurance intermediaries and insurance undertakings distributing insurance-based investment products shall, upon request, provide customers 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, as developed by EIOPA.

EIOPA shall develop draft regulatory technical standards to determine the explanation and warning referred to in paragraph 1, sub-paragraph 2 and the format and content of the report referred to in paragraph 1, sub-paragraph 3.

EIOPA shall submit the draft regulatory technical standards to the Commission by [[OJ: insert date 1 year after the date of entry into force].

Power is conferred to the Commission to adopt those regulatory technical standards in accordance with Article 39.

(2) Without prejudice to Article 20(1), when providing advice on insurance-based investment products, the insurance intermediary or insurance undertaking shall obtain the necessary 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.

(3) 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 that 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 negative appropriateness warning 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 implementing technical standards to determine the format and content of the warning referred to in subparagraph 2.

EIOPA shall submit the draft implementing technical standards to the Commission by [[OJ: insert date 1 year after the date of entry into force].

Power is conferred to the Commission to adopt those implementing technical standards in accordance with Article 39.

(4) 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 4 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 3 of this Article where all 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; or

(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 or does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning shall be provided in a standardised format.

EIOPA shall develop draft implementing technical standards to determine the format and content of warning referred to in subparagraph c)

EIOPA shall submit the draft implementing technical standards to the Commission by [[OJ: insert date 1 year after the date of entry into force].

Power is conferred to the Commission to adopt those implementing technical standards in accordance with Article 39.

(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.

(5) The insurance intermediary or insurance undertaking shall establish a record that includes the document or documents agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

(6) The insurance intermediary or insurance undertaking shall provide the customer with adequate reports on the insurance distribution activities on a durable medium. Those reports shall include 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 include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

When providing advice on an insurance-based investment product, the insurance intermediary or the insurance undertaking shall, prior to the conclusion of the contract, provide the customer with a suitability statement on a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the retail 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.

Where the insurance contract is concluded using a 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 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; and

(b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement in advance of such conclusion.

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.

(7) 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.

The stricter requirements of a Member State referred to in this paragraph have to 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.

(8) Member States shall require that, where an insurance intermediary informs the customer that advice is given on an independent basis, the intermediary shall:

(a) assess 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 intermediary.

(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.

(8a) When providing investment advice to retail clients on an independent basis, the insurance intermediary may limit the assessment in relation to the type of insurance products mentioned in subparagraph 8(a) to well-diversified, cost-efficient and non-complex insurance-based investment products. Before accepting such service, the retail client shall be duly informed about the

possibility and conditions to get access to a standard investment advice and the associated benefits and constraints.

(9) The Commission shall be empowered to adopt 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 point (ii) of point (a) of paragraph 4 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.

(10) By 23 August 2017, EIOPA shall develop guidelines, and thereafter update them periodically, for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved as referred to in point (i) of point (a) of paragraph 5.

(11) EIOPA may develop guidelines, and thereafter update them periodically, for the assessment of insurance-based investment products being classified as non complex for the purpose of point (ii) of point (a) of paragraph 5, taking into account the delegated acts adopted under paragraph 10.'

27. Article 35 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'Member States shall ensure that the competent authorities establish effective mechanisms to enable and encourage the reporting of possible or actual breaches of national provisions implementing this Directive to competent authorities.'

(b) Paragraph 2, 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 insurance products made available through digital or other means, which they believe to be in breach of Union law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via this

reporting form;'

28. A new Article 35a is inserted:

'*Article 35a*

Monitoring of 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 under Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC, the competent authority shall take all appropriate and proportionate measures to prevent the pursuit of these distribution activities, including related marketing communication, by resorting to the powers referred to in Article 12(3) of this Directive. Any such measures shall respect the principles of cooperation between Member States set out in this Directive.

Member States shall also ensure that, in cases where an entity is not registered under Article 3 of this Directive or authorised in accordance with Article 14 of Directive 2009/138/EC and a competent authority has reasonable grounds to suspect that that entity is pursuing insurance distribution activities online targeting customers within its territory, competent authorities may take similar precautionary measures than those mentioned in the first subparagraph.

(2) Member States shall provide that competent authorities publish any decision imposing a measure pursuant to paragraph 1 even where the measure is taken by way of precaution pursuant to the second subparagraph of paragraph 1. The publication shall display, in prominent manner, whether the decision is taken on the basis of an ascertained violation or on that of a suspicion based on reasonable grounds of violation of the provisions under this Directive or Directive 2009/138/EC.

Competent authorities shall inform EIOPA of any such decision as referred to in paragraph 2. 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 entities concerned and the types of services or products provided. The list shall be accessible to the public through a link displayed in a prominent manner on the front page of EIOPA's website.'

29. Annex I is amended as follows:

(a) Points (a) to (l) of paragraph II are replaced by the following:

'(a) minimum necessary knowledge of the key characteristics, risks and features of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits as well as the financial risks borne by policyholders and any general tax implications to be incurred by the client;

(b) minimum necessary knowledge of the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;

(c) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;

(d) minimum necessary financial competency, including:

– understanding how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;
– understanding the impact of macro-economic developments, national/ regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;
– understanding of the difference between past performance and future performance scenarios as well as the limits of forecasting;
– understanding of specific market structures for the type of financial instruments offered or recommended to clients;
– understanding of the valuation principles for the type of financial instruments offered or recommended to clients;

(e) minimum necessary knowledge of policies covering life risks and other savings products;

(f) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;

(g) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;

(h) minimum necessary knowledge to assess data relevant to the insurance-based investment products offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;

(i) minimum necessary knowledge of the general implications of the main elements of the financial regulatory framework;

(j) minimum necessary knowledge of the insurance market and of the saving products market;

(k) minimum necessary knowledge of complaints handling;

(l) minimum necessary knowledge of assessing customer needs, including understanding of how the type of insurance-based investment product provided by the firm may not be suitable for the client, having assessed the relevant

information provided by the client against changes that have occurred since the relevant information was gathered;

(m) understand the concept of sustainable investment and how to consider and integrate sustainability factors and customer's sustainability preferences into the advisory processes;

(n) conflicts of interest management;

(o) minimum necessary knowledge of business ethics standards.'

Article 3

Amendments to Directive 2009/138/EC [Solvency II]

Directive (EU) 2009/138 is amended as follows:

1. The heading of Section 5 of Chapter 1 in Title II is replaced by the following heading:

'Section 5

Cancelation right'

2. Articles 183, 184 and 185 are deleted.

Article 4

Amendments to Directive 2009/65/EU [UCITS]

Directive 2009/65/EU is amended as follows:

1. Article 14 is amended as follows:

(a) the following paragraph 1bis is added:

'1bis. For the purpose of paragraph 1, Member States shall in particular require management companies to act in such a way as to prevent undue costs from being charged to the UCITS and its unit-holders.

(a) Costs are due if following conditions are met:

1. They comply with disclosures in the prospectus referred to in Article 69 and the key investor information referred to in Article 78;

2. They are necessary for the UCITS to operate in line with its investment objective or to fulfil regulatory requirements.

3. They are borne by investors in a way that ensures fair treatment of investors.

(b) 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 and throughout the life of the UCITS, this pricing process shall:

(i) ensure that the costs are not undue; and

(ii) ensure that the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the UCITS, in particular its investment objective, strategy, expected returns, level of risks and other relevant characteristics.

UCITS 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 UCITS 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.

(c) Member States shall require management companies to assess at least annually whether undue costs have been charged to investors.

Member States shall require management companies to reimburse investors where undue costs have been charged to the UCITS and its unit-holders.

Member States shall require management companies to report to the home competent authorities of the UCITS and its management companies, to the depositary and to the financial auditors of the UCITS, situations where undue costs have been charged to the UCITS and its unit-holders.

(d) Member States shall require management companies to assess at least annually the conditions mentioned in paragraph 1bis(b)(ii). This 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 subparagraph (d).

A UCITS, or its share classes where they have different cost structures, that, when authorised, deviate from the benchmark published by ESMA for the corresponding category of products, or that do not comply with other criteria set out by the management company in the pricing process, shall not be marketed to retail investors unless a further assessment has established that the conditions set out in point 1bis(b)(ii) are satisfied.

If the deviation from the benchmark is detected during the life of the UCITS, the management company shall subject the UCITS to enhanced

monitoring. If the enhanced monitoring shows the need for corrective measures, the management company shall take these measures within a reasonable timeframe to ensure that the conditions set out in point 1bis(b)(ii) are satisfied.

The management company shall document and keep a record of the assessment, including the result of the comparison to the relevant benchmark, where applicable the reasons justifying a deviation from the benchmark and an explanation as to how the UCITS meets the conditions set out in point 1bis(a).

(e) ESMA, after consulting EIOPA and competent authorities, 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 point 1bis(b)(ii).

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.

The 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) The first sentence in paragraph 2 is amended as follows:

'2. 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 and 1 bis in particular to:'

(c) In paragraph 2, point b is amended as follows:

'(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;'

(d) In paragraph 2, points d and e are added as follows:

'(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 1bis(a)(1);

(ii) identifying which costs can be charged to investors 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 1bis(a)(2) and (3), and the conditions under which NCAs 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 1bis(a)(2) and (3).

(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest.

(iv) a procedure to establish the level of compensation in case undue costs have been charged to investors.

(e) provide for criteria and elements to determine whether costs are justified and proportionate in accordance with point 1bis (b)ii and for taking corrective measures mentioned in point 1bis(d). This delegated act shall also specify the methodology used by ESMA to develop its benchmarks.'

(e) paragraph 4 is added as follows:

'4. [Five years] after the start of application of this amending Directive, the Commission shall, after consulting ESMA, submit a report to Council and Parliament, accompanied, where appropriate by a legislative proposal, on at least the following:

(a) whether the framework has had a positive impact on the costs and performance of UCITS offered to retail investors and to which extent;

(b) whether the process is proportionate in terms of complexity and costs incurred by management companies.'

2. Article 20a is added as follows:

'**Article 20a**

Reporting obligations to competent authorities

A management company shall, in respect of each UCITS it manages~~,~~ provide to its home competent authority information on the costs borne by investors and performance of the UCITS, at the level of each fund, or at the level of the UCITS share classes where those share classes have different cost structures.'

3. In Article 30, the second paragraph is amended as follows:

'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(1bis)(c).'

4. In Article 90, the following sentence is added at the end:

'his article applies without prejudice to the application of Article 14.'

5. In Article 98, point (n) is added to paragraph 2 as follows:

‘(n) require compensation to investors where undue costs have been charged.’

6. In Article 99, point (i) is added to paragraph 6 as follows:

‘(i) require compensation to investors where undue costs have been charged.’

Article 5

Amendments to Directive 2011/61/EU [AIFMD]

Directive (EU) 2011/61 is amended as follows:

1. Article 14 is amended as follows:

(a) the following paragraph 1bis is added:

“1bis. For the purpose of paragraph 1, Member States shall in particular require AIFMs to act in such a way as to prevent undue costs from being charged to the AIFs and its unitholders.

(a) Costs are due if following conditions are met:

1. They comply 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 investor information referred to in Article 5(1) of Regulation (EU) No 1286/2014;

2. They are necessary for the AIF to operate in line with its investment objective or to fulfil regulatory requirements.

3. They are borne by investors in a way that ensures fair treatment of investors, except for cases mentioned in Article 12 (1) where AIF rules or instruments of incorporation provide for a preferential treatment.

(b) 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 its unitholders. This pricing process shall:

(i) ensure that the costs are not undue; and

(ii) ensure that the costs borne by retail investors are justified and proportionate, having regard to the characteristics of the AIF, in particular its investment objective, strategy, expected returns, level of risks and other relevant characteristics.

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.

(c) Member States shall require AIFMs to assess at least annually whether undue costs have been charged to investors.

Member States shall require AIFMs to reimburse investors where undue costs have been charged to the AIF and its unit-holders.

Member States shall require AIFMs to report to their home competent authorities, to the home competent authority 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 and its unit-holders.

(d) Member States shall require AIFMs to assess at least annually the conditions mentioned in paragraph 1bis(b)(ii). This 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 subparagraph (d).

An AIF, or its share classes where they have different cost structures, that, before being marketed to retail investors, deviate from the benchmark published by ESMA for the corresponding category of products, or that do not comply with other criteria set out by the AIFM in the pricing process, shall not be marketed to retail investors unless a further assessment has established that the condition set out in point 1bis(b)(ii) is satisfied.

If the deviation from the benchmark is detected while the AIF is already marketed to retail investors, the AIFM shall subject the AIF to enhanced monitoring. If the enhanced monitoring shows the need for corrective measures, the AIFM shall take these measures within a reasonable timeframe to ensure that the condition set out in point 1bis(b)(ii) is satisfied.

The AIFM shall document and keep a record of the assessment, including the result of the comparison to the relevant benchmark published by ESMA, where applicable the reasons justifying a deviation from the benchmark and an explanation as to how the UCITS meets the requirement set out in point 1bis(a).

(e) ESMA, after consulting EIOPA and competent authorities, 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 point 1bis(b)(ii).

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.

The 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) paragraphs 3 and 4 are amended as follows:

'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. and measures to ensure that the AIFM complies with the duties set out in paragraphs 1 bis, 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 1bis(a)(1);

(ii) identifying which costs can be charged to investors 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 1bis(a)(2) and (3), and the conditions under which NCAs 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 1bis(a)(2) and (3).

(iii) identifying potential conflict of interests and measures to mitigate the occurrence of conflicts of interest.

(iv) a procedure to establish the level of compensation in case undue costs have been charged to investors.

(b) provide for criteria and elements to determine whether costs are justified and proportionate in accordance with point 1bis (b)ii and for taking corrective measures mentioned in point 1bis(d). This delegated act shall also specify the methodology used by ESMA to develop its benchmarks.

4. [Five years] after the start of application of this amending Directive, the Commission shall, after consulting ESMA, submit a report to Council and Parliament, accompanied, where appropriate by a legislative proposal, on at least the following:

(a) whether the framework has had a positive impact on the costs and performance of AIF offered to retail investors and to which extent;

(b) whether the process is proportionate in terms of complexity and costs incurred by AIFM.'

2. Point (f) is added to paragraph (2) of Article 25 as follows:

'(f) information on the costs borne by investors and performance of the AIF, at the level of each AIF or at the level the AIF's share classes where those share classes have different cost structures.'

3. Point (n) is added to paragraph (2) of Article 46 as follows:

'(n) require compensation to investors where undue costs have been charged.'

Article 6

Revision [if relevant]

The Commission shall, by DATE and annually thereafter, submit to the European Parliament and to the Council a report specifying whether the ESAs have submitted the draft regulatory technical standards and implementing technical standards provided for in Directives (EU) 2016/97, 2014/65/EU, 2009/138/EC and (EU) 2019/1160, whether the submission of such draft regulatory technical standards or implementing technical standards is mandatory or optional, together with proposals, where appropriate.

Article 7

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.

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 8

Entry into force

This Directive shall enter into force on the […] day following that of its publication in the Official Journal of the European Union.

Article 9

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*