European Parliament
2019-2024

Committee on Economic and Monetary Affairs

2023/0167(COD)

10.01.2024

*****I**

DRAFT COMPROMISES

Retail investment Strategy (MiFID II)

on the proposal for a Proposal for a directive amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules (2023/0167(COD))
Committee on Economic and Monetary Affairs

Rapporteur: Stéphanie Yon-Courtin

Text in red, bold and italics = amendments
Text in red, bold, italics and ~~strikethrough~~ = amendments deleting COM proposal
Text in bold = COM proposal

(CONSOLIDATED VERSION BASE ON THE CURRENT MiFID II TEXT)

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

(recast) (Text with EEA relevance)

TITLE I - **SCOPE AND DEFINITIONS**

Unchanged articles:

Article 1 - Scope (unchanged COM proposal)
Article 2 - Exemptions (no changes to current text)
Article 3- Optional exemptions (no changes to COM proposal)

Article 4 - Definitions

1. For the purposes of this Directive, the following definitions apply:

[...]

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

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

(b) to natural or legal persons;

(c) in any form and by any means;

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

(a) directly or indirectly disseminate marketing communications;

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

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

(68) 'online interface' means any software, including a website, part of a website or an application, *including a mobile applications* [AM 695 Heinäluoma, Lalucq, Repasi];

(68a) 'financial and non-financial market data' means:

(i) raw market data from trading platforms received through specialist real-time providers;

(ii) data relating to third parties attached to securities (for instance issuers) and financial instruments, aggregated and sold by data providers, which feed into the market data repository of financial institutions;

(iii) data provided by credit rating agencies or ESG rating agencies, mainly based on an analysis of the quality of the issuer's rating and/or perceived sustainability;

(iv) data provided by index administrators;

(v) all other data derived from financial analysis (for instance research); **[AM 19 Yon-Courtin]**

(68b) 'data provider' means a legal person whose occupation includes the offering and distribution of financial and non-financial market data on a professional basis. **[AM 20 Yon-Courtin]**

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to specify some technical elements of the definitions laid down in paragraph 1, to adjust them to market developments, technological developments and experience of behaviour that is prohibited under Regulation (EU) No 596/2014 and to ensure the uniform application of this Directive.

TITLE II - **AUTHORISATION AND OPERATING CONDITIONS FOR INVESTMENT FIRMS**

CHAPTER I

Conditions and procedures for authorisation

Unchanged articles in this Chapter:
Article 6 Scope of authorisation (current text - no changes)
Article 10 Shareholders and members with qualifying holdings (current text - no changes)
Article 11 Notification of proposed acquisitions (current text - no changes)
Article 12 Assessment period (current text - no changes)
Article 13 Assessment (current text - no changes)
Article 14 Membership of an authorized investor compensation scheme (current text - no changes)
Article 15 Initial capital endowment (current text - no changes)
Article 17 Algorithmic trading (current text - no changes)
Article 18 Trading process and finalization of transactions in an MTF and an OTF (current text-no changes)
Article 19 Specific requirements for MTFs (current text - no changes)
Article 20 Specific requirements for OTFs (current text - no changes)

Article 5 - **Requirement for authorisation**

1. Each Member State shall require that the provision of investment services and/or the performance of investment activities as a regular occupation or business on a professional basis be subject to prior authorisation in accordance with this Chapter. Such authorisation shall be granted by the home Member State competent authority designated in accordance with Article 67.

2. By way of derogation from paragraph 1, Member States shall authorise any market operator to operate an MTF or an OTF, subject to the prior verification of their compliance with this Chapter.

3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to ESMA.

ESMA shall establish a list of all investment firms in the Union. That list shall contain information on the services or activities for which each investment firm is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Where a competent authority has withdrawn an authorisation in accordance with points (b), (c) and (d) of Article 8, that withdrawal shall be published on the list for a period of five years.

4. Each Member State shall require that:
(a) any investment firm which is a legal person ~~***have***~~ ***has*** **[AM 210 Benjumea, Fitzgerald]** its head office in the same Member State as its registered office ***from where it can operate fully within the EU single market and utilise the EU's freedom of services*** **[AM 208 Fitzgerald, Benjumea]** ***and does not provide investment services or perform investment activities solely in other Member States;*** **[AM 21 Yon-Courtin]**

(b) any investment firm which is not a legal person or any investment firm which is a legal person but under its national law has no registered office, have its head office in the Member State in which it actually carries out its business.

Article 5a

Procedure to address unauthorised activities offered through digital means

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

The first subparagraph shall also apply to any third party ("finfluencers") that is remunerated or incentivised through non-monetary compensation by a firm which is not authorised under Article 5(1) or national law, where such third party promotes through public social media platforms services or financial instruments on behalf of such a firm. **[AM 22 Yon-Courtin]**

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

Article 7- **Procedures for granting and refusing requests for authorisation**

1. The competent authority shall not grant authorisation unless and until such time as it is fully satisfied that the applicant complies with all requirements under the provisions adopted pursuant to this Directive.

2. The investment firm shall provide all information, including a programme of operations setting out, inter alia, the types of business envisaged and the organisational structure, necessary to enable the competent authority to satisfy itself that the investment firm has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations under this Chapter.

3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted.

Where the authorisation has not been granted, the competent authority shall inform ESMA about the reasons for not granting the authorisation *without undue delay* [AM 211 Pereira].

3a. ESMA shall establish and make available to competent authorities a list of all entities that have been refused authorisation. The list shall contain information on the services or activities for which each investment firm has sought authorisation, as well as the reasons for the refusal to grant the authorisation and shall be updated on a regular basis.

4. ESMA shall develop draft regulatory technical standards to specify:
(a) the information to be provided to the competent authorities under paragraph 2 of this Article including the programme of operations;
(b) the requirements applicable to the management of investment firms under Article 9(6) and the information for the notifications under Article 9(5);
(c) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

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.

5. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in paragraph 2 of this Article and in Article 9(5).

ESMA shall submit those draft implementing technical standards to the Commission by 3 January 2016.

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.

Article 8 - **Withdrawal of authorisations**

The competent authority may withdraw the authorisation issued to an investment firm where such an investment firm:
(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no investment services or performed no investment activity for the preceding six months, unless the Member State concerned has provided for authorisation to lapse in such cases;
(b) has obtained the authorisation by making false statements or by any other irregular means;
(c) no longer meets the conditions under which authorisation was granted, such as compliance with the conditions set out in Regulation (EU) 2019/2033 of the European Parliament and of the Council ([10]);
(d) has seriously and systematically infringed the provisions adopted pursuant to this Directive or Regulation (EU) No 600/2014 governing the operating conditions for investment firms;
(e) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.

Every withdrawal of authorisation shall be notified to ESMA, ***without undue delay*** **[AM 212 Pereira]**. **The competent authority shall inform ESMA about the reasons for withdrawing the authorisation.**

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

Article 9 - **Management body**

1. Competent authorities granting the authorisation in accordance with Article 5 shall ensure that investment firms and their management bodies comply with Article 88 and Article 91 of Directive 2013/36/EU.

ESMA and EBA shall adopt, jointly, guidelines on the elements listed in Article 91(12) of Directive 2013/36/EU.

2. When granting the authorisation in accordance with Article 5, competent authorities may authorise members of the management body to hold one additional non-executive directorship than allowed in accordance with Article 91(3) of Directive 2013/36/EU. Competent authorities shall regularly inform ESMA of such authorisations.

EBA and ESMA shall coordinate the collection of information provided for under the first subparagraph of this paragraph and under Article 91(6) of Directive 2013/36/EU in relation to investment firms.

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,~~**and**~~ the prevention of conflicts of interest **and the protection of investors**, and in a manner that promotes the integrity of the market and the interest of clients.

Without prejudice to the requirements established in Article 88(1) of Directive 2013/36/EU, those arrangements shall also ensure that the management body define, approve and oversee:
(a) the organisation of the firm for the provision of investment services and activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with**.** ***The policy must ensure that the intended benefits to the clients are taken into consideration*** **[AM 213 Poulsen]**;
(b) a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the firm and the characteristics and needs of the clients of the firm to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;
(c) a remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients;

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

The management body shall monitor and periodically assess the adequacy and the implementation of the firm's strategic objectives in the provision of investment services and activities and ancillary services, the effectiveness of the investment firm's governance arrangements and the adequacy of the

policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.

Members of the management body shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

4. The competent authority shall refuse authorisation if it is not satisfied that the members of the management body of the investment firm are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions in the investment firm, or if there are objective and demonstrable grounds for believing that the management body of the firm may pose a threat to its effective, sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

5. Member States shall require the investment firm to notify the competent authority of all members of its management body and of any changes to its membership, along with all information needed to assess whether the firm complies with paragraphs 1, 2 and 3.

6. Member States shall require that at least two persons meeting the requirements laid down in paragraph 1 effectively direct the business of the applicant investment firm.

By way of derogation from the first subparagraph, Member States may grant authorisation to investment firms that are natural persons or to investment firms that are legal persons managed by a single natural person in accordance with their constitutive rules and national laws. Member States shall nevertheless require that:
(a) alternative arrangements be in place which ensure the sound and prudent management of such investment firms and the adequate consideration of the interest of clients and the integrity of the market;
(b) the natural persons concerned are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

Article 16 **Organisational requirements**

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

2. An investment firm shall establish adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and tied agents with its obligations under this Directive as well as appropriate rules governing personal transactions by such persons.

3. An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 23 from adversely affecting the interests of its clients.

~~**An investment firm which manufactures financial instruments for sale to clients shall 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 shall specify an identified target market of end clients within the relevant category of clients for each financial instrument and shall ensure that all relevant risks**~~

~~to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.~~

~~An investment firm shall also regularly review financial instruments it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the financial instrument remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.~~

~~An investment firm which manufactures financial instruments shall make available to any distributor all appropriate information on the financial instrument and the product approval process, including the identified target market of the financial instrument.~~

~~Where an investment firm offers or recommends financial instruments which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in the fifth subparagraph and to understand the characteristics and identified target market of each financial instrument.~~

~~The policies, processes and arrangements referred to in this paragraph 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 inducements.~~ **[COM proposal]**

~~3a. . An investment firm shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to ensure that marketing communications and practices comply with the obligations set out in Article 24c.~~

4. An investment firm shall take reasonable steps to ensure continuity and regularity in the performance of investment services and activities. To that end the investment firm shall employ appropriate and proportionate systems, resources and procedures.

5. An investment firm shall ensure, when relying on a third party for the performance of operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the supervisor to monitor the firm's compliance with all obligations.

An investment firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

Without prejudice to the ability of competent authorities to require access to communications in accordance with this Directive and Regulation (EU) No 600/2014, an investment firm shall have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times.

6. An investment firm shall arrange for records to be kept of all services, activities and transactions undertaken by it which shall be sufficient to enable the competent authority to fulfil its supervisory tasks and to perform the enforcement actions under this Directive, Regulation (EU) No 600/2014,

Directive 2014/57/EU and Regulation (EU) No 596/2014, and in particular to ascertain that the investment firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.

6a. Investment firms providing investment advice and portfolio management services shall be required to report to national competent authorities of its home Member State on an annual basis:
(i) the number of financial instruments it considers when providing advice, with a distinction between instruments issued or provided by entities with close link to the investment firm and those provided by non-affiliated third-party providers;
(ii) the ratio of financial instruments sold to clients that are issued or provided by entities with close links to the investment firm and those provided by non-affiliated third-party providers; National competent authorities shall forward this information to ESMA without undue delay.
[AM 216 Heinäluoma, Lalucq, Repasi]

7. Records shall include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders.

Such telephone conversations and electronic communications shall also include those that are intended to result in transactions concluded when dealing on own account or in the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services.

For those purposes, an investment firm shall take all reasonable steps to record relevant telephone conversations and electronic communications, made with, sent from or received by equipment provided by the investment firm to an employee or contractor or the use of which by an employee or contractor has been accepted or permitted by the investment firm.

An investment firm shall notify new and existing clients that telephone communications or conversations between the investment firm and its clients that result or may result in transactions will be recorded.

Such a notification may be made once, before the provision of investment services to new and existing clients.

An investment firm shall not provide, by telephone, investment services and activities to clients who have not been notified in advance about the recording of their telephone communications or conversations, where such investment services and activities relate to the reception, transmission and execution of client orders.

Orders may be placed by clients through other channels, however such communications must be made in a durable medium such as mails, faxes, emails or documentation of client orders made at meetings. In particular, the content of relevant face-to-face conversations with a client may be recorded by using written minutes or notes. Such orders shall be considered equivalent to orders received by telephone.

An investment firm shall take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the investment firm is unable to record or copy.

The records kept in accordance with this paragraph shall be provided to the client involved upon request and shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years.

7a. Member States shall ensure that investment firms establish appropriate procedures and arrangements, including electronic communication channels, to ensure that client's rights under this Directive can be exercised without restriction and that client's complaints, as referred to in Article 75, are dealt with properly *and ~~expeditiously~~ without undue delay*. Those procedures shall allow investors to register complaints in any language in which communication material or services were provided ~~or in the~~. *In addition to such* language, ~~as agreed between~~ the firm and its clients *may also agree* prior to entering into any transaction *on the use of an additional language for the purpose of registering complaints* [AM 217 Yon-Courtin]. In all cases, complaints shall be registered and complainants shall receive replies within *a delay proportionate to the subject matter of the complaint, and in any case no later than within 30* working days *after a complaint is addressed. Replies shall be written in the language in which complaints were made* [AM 218 Yon-Courtin, AM 219 Heinäluoma, Lalucq, Repasi]..'

8. An investment firm shall, when holding financial instruments belonging to clients, make adequate arrangements so as to safeguard the ownership rights of clients, especially in the event of the investment firm's insolvency, and to prevent the use of a client's financial instruments on own account except with the client's express consent.

9. An investment firm shall, when holding funds belonging to clients, make adequate arrangements to safeguard the rights of clients and, except in the case of credit institutions, prevent the use of client funds for its own account.

10. An investment firm shall not conclude title transfer financial collateral arrangements with retail clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of clients.

11. In the case of branches of investment firms, the competent authority of the Member State in which the branch is located shall, without prejudice to the possibility of the competent authority of the home Member State of the investment firm to have direct access to those records, enforce the obligation laid down in paragraphs 6 and 7 with regard to transactions undertaken by the branch.
Member States may, in exceptional circumstances, impose requirements on investment firms concerning the safeguarding of client assets additional to the provisions set out in paragraphs 8, 9 and 10 and the respective delegated acts as referred to in paragraph 12. Such requirements must be objectively justified and proportionate so as to address, where investment firms safeguard client assets and client funds, specific risks to investor protection or to market integrity which are of particular importance in the circumstances of the market structure of that Member State.
Member States shall notify, without undue delay, the Commission of any requirement which they intend to impose in accordance with this paragraph and at least two months before the date appointed for that requirement to come into force. The notification shall include a justification for that requirement. Any such additional requirements shall not restrict or otherwise affect the rights of investment firms under Articles 34 and 35.

The Commission shall within two months of the notification referred to in the third subparagraph provide its opinion on the proportionality of and justification for the additional requirements.

Member States may retain additional requirements provided that they were notified to the Commission in accordance with Article 4 of Directive 2006/73/EC before 2 July 2014 and that the conditions laid down in that Article are met.

The Commission shall communicate to Member States and make public on its website the additional requirements imposed in accordance with this paragraph.

12. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to specify the concrete organisational requirements laid down in paragraphs 2 to 10 of this Article to be imposed on investment firms and on branches of third-country firms authorised in accordance with Article 41 performing different investment services and/or activities and ancillary services or combinations thereof.

Article 16-a

Product governance requirements

1. Member States shall ensure that investment firms which manufacture financial instruments for sale to clients establish, maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients (the product approval process). The product approval process shall contain all of the following: (a) a specification of an identified target market of end-clients within the relevant category of clients for each financial instrument. *Such target market shall at least contain information regarding the type of clients to whom the product is targeted, the knowledge and experience level needed to understand the product, the ability to bear losses, risk tolerance and the objectives and needs clients shall have to invest in the financial instrument*; [AM 220 Yon-Courtin]

~~(b) a clear identification of the target market's objectives and needs;~~ **[AM 222 Yon-Courtin]**

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

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

(e) in relation to financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council*, *and which are made available to retail clients*, a clear identification *~~and quantification of~~ of both quantitative and qualitative elements of the financial product, including i)* all costs and charges related to the *distribution of* [AM 231 Yon-Courtin] financial instrument and, *ii)* an assessment of whether those costs and charges are justified *~~and~~* proportionate, having regard to the characteristics, objectives *~~and, if relevant~~*, strategy *~~of the financial instrument, and its~~* performance *of the product* ('pricing process'), *and iii) additional product features and services that may impact the value and benefits provided to investors*. [AM 229 Benjumea]

~~*The pricing process referred to in point (e) shall include a comparison with the relevant benchmark, where available, on costs and performance published by ESMA in accordance with paragraph 9.*~~ **[AM 23 Yon-Courtin AM 240 Nesci, AM 241 Zanni, Grant, Rinaldi, AM 242 Castaldo, AM 243 Karas, AM 244 Poulsen, Kovařík, AM 245 Benjumea, AM 246 Fitzgerald]**

~~*When a financial instrument deviates from the relevant benchmark referred to in paragraph 9, the investment firm shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification andproportionality of costs and charges cannot be demonstrated, the financial instrument shall not be approved by the investment firm.*~~ **[AM 24 Yon-Courtin, AM 251 Benjumea, AM 252 Poulsen, Kovařík, AM 253 Karas, AM 254 Seekatz, Ferber, AM 255 Castaldo, AM 256 Fitzgerald, AM 257 Zanni, Grant, Rinaldi, AM 258 Nesci]**

(e a) An investment firm shall regularly review the financial instruments it manufactures taking into account any event or risk that could materially affect the identified target market, to assess whether the financial instrument remains consistent with the characteristics of the target market and if it is being distributed to the target market. ~~*, or is reaching clients for whose needs, characteristics and objectives the financial instrument is not compatible*~~ **[AM 237 Yon-Courtin]**

(e b) an assessment of whether the financial product is designed to contribute to improving the financial health of a consumer, meaning consumer's ability to manage short-term finances, build resilience to economic shocks, set and achieve long-term financial goals, and have confidence in their financial future. **[AM 239 Yon-Courtin]**

An investment firm which manufactures financial instruments shall make available to distributors all information on the financial instrument and the product approval process that is needed to fully understand that instrument and the elements taken into consideration during the product approval process, including complete and accurate details on any costs and charges*, features, objectives, strategy and performance* [AM 263 Fitzgerald] of the financial instrument.

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

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

(b) data on the characteristics of the financial instrument, in particular its performance*, objectives* [AM 268 Fitzgerald] and the level of risk.

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

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

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

characteristics **[AM 281 Yon-Courtin] of the identified target market and whether the intended distribution strategy remains appropriate.**

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

(a) identify and quantify ~~*the costs of distribution and*~~ **any further costs and charges** *related to the distribution* **[AM 286 Castaldo, AM 287 Zanni, Grant, Rinaldi,] not already taken into account by the manufacturer***, including entry costs, exit costs and third-party payments received and retained by the distributor;* **[AM 288 Benjumea]**

(b) assess whether the total costs and charges *incurred for the distribution of the product, including those associated with the investment advice provided to the client,* **are justified and proportionate, having regard to the** *characteristics of the instrument and of the service provided* **[AM 290 Yon-Courtin] target market's objectives and needs (pricing process).**

(b a) assess additional product features and services that may impact the value and benefits provided to investors. **[AM 295 Benjumea]**

~~*The pricing process, as referred to in points (a) and (b), shall include a comparison with the relevant benchmark, when available, on costs and performance published by ESMA in accordance with paragraph 9.*~~ **[AM 25 Yon-Courtin, AM 296 Nesci, AM 297 Poulsen, Kovařík, AM 298 Seekatz, Ferber, AM 299 Zanni, Grant, Rinaldi, AM 300 Castaldo, AM 301 Benjumea]**

~~*When a financial instrument, together with costs of services incurred by the client in order to purchase that instrument, deviates from the relevant benchmark referred to in paragraph 9, the investment firm which offers or recommends a financial instrument shall perform additional testing and further assessments and establish whether costs and charges are nevertheless justified and proportionate. If justification and proportionality of costs and charges cannot be demonstrated, the financial instrument shall not be offered or recommended by the investment firm.*~~ **[AM 26 Yon-Courtin, AM 303 Poulsen, AM 304 Benjumea, AM 305 Karas, AM 306 Zanni, Grant, Rinaldi, AM 307 Seekatz, Ferber, AM 308 Fitzgerald, AM 309 Castaldo, AM 310 Nesci]**

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

(a) **details of** *the costs and charges of the financial instrument, including* **the costs of distribution,** ~~*including*~~ **any costs related to the provision of advice** ~~*or*~~ *and* **any connected third-party payments;**

(b) data on the characteristics of the financial instrument, in particular its performance and the level of risk. **[AM 313 Yon-Courtin]**

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

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

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

(b) data on the characteristics of the financial instruments, in particular its performance, *objective* 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 *justification and demonstration of the proportionality of costs and charges of the financial instrument.* [AM 335 Castaldo]

~~*(a) where relevant, the results of the comparison of the financial instrument to the relevant benchmark;*~~ **[AM 27 Yon-Courtin, AM 337 Nesci, AM 338 Zanni, Grant, Rinaldi, AM 339 Poulsen, Kovařík, AM 340 Seekatz, Ferber]**

~~*(b) where applicable, the reasons justifying a deviation from the benchmark;*~~ **[AM 28 Yon-Courtin, AM 341 Nesci, AM 342 Poulsen, Kovařík, AM 343 Zanni, Grant, Rinaldi, AM 344 Seekatz, Ferber]**

~~*(c) the justification and demonstration of the proportionality of costs and charges of the financial instrument.*~~ **[AM 345 Seekatz, Ferber]**

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

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

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

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

~~*ESMA shall regularly update the benchmarks.*~~ **[AM 29 Yon-Courtin, AM 349 Nesci, AM 350 Zanni, Grant, Rinaldi, AM 351 Castaldo, AM 352 Poulsen, Kovařík, AM 353 Benjumea, AM 354, 357, 360, 362 Fitzgerald]**

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

11. The Commission is empowered to supplement this Directive by adopting delegated acts in accordance with Article ~~*89 to*~~ *38 to further* specify the ~~*following*~~ *criteria to determine whether the product characteristics are justified and proportionate;* [AM 370 Fitzgerald]

~~*(a) the methodology used by ESMA to develop benchmarks referred to in paragraph 9;*~~ **[AM 30 Yon-Courtin, AM 371 Fitzgerald]**

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

12. ESMA, after having consulted EIOPA and the competent authorities ~~*and taking into consideration the methodology referred to in paragraph 11, point (a),*~~ **shall develop draft regulatory technical standards specifying the following: [AM 31 Yon-Courtin, AM 377 Karas, AM 378 Benjumea, AM 379 Castaldo, AM 380 Zanni, Grant, Rinaldi, AM 381 Nesci]**

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

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

ESMA shall submit those draft regulatory technical standards to the Commission by ... [18 months after ***the date of entry into force of this Directive].*** **[AM 32 Yon-Courtin, AM 393 Zanni, Grant, Rinaldi, AM 394 Castaldo, AM 395 Fitzgerald, AM 396 Karas, AM 397 Nesci]**

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

Article 16a

Exemptions from product governance requirements

An investment firm shall be exempted from the requirements set out in ~~**the second to fifth subparagraphs of Article 16(3)**~~ **the Article 16-a(1)** and in Article 24(2), where the investment service it provides relates ~~***to bonds with no other embedded derivative than a make-whole clause***~~ ***to financial instruments which are not packaged investment products*** or where the financial instruments are marketed or distributed exclusively to eligible counterparties. **For the purpose of this Article, 'packaged investment product' means an investment where, regardless of the legal form, the amount repayable to the investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the investor.' [AM 400 Yon-Courtin]**

Article 16aa

Data providers

1. Data providers shall comply with the following requirements:

(a) the provision of financial and non-financial market data shall be fair, reasonable, non-discriminatory, and transparent. In that regard, the following shall apply:

(i) transparency requires the disclosure of the methodologies and data sources or estimates used in providing financial and non-financial market data to the public. Data providers shall disclose on their website the methodologies and data sources or estimates they use in the provision of their services. Such transparency requirement shall also apply to their data pricing and licence policies applicable to the users to which they market their financial and non-financial market data. Price methodologies shall be clear, accessible and easily comparable across data providers;

(ii) financial and non-financial data shall be made accessible without discrimination. To facilitate fair competition in the financial and non-financial data market, data providers shall also ensure that fees charged to users for the provision of financial and non-financial data are not discriminatory and are based on actual costs;

(b) regarding the quality of the data, the following shall apply:

(i) data providers shall adopt all measures necessary to ensure that the information they use for financial and non-financial data is of sufficient quality and from reliable sources;

(ii) data providers shall adopt and implement sound administrative and accounting procedures, internal control mechanisms, and effective control and safeguard arrangements for information processing systems;

(c) regarding supervision, control, and conflicts of interest, the following shall apply:

(i) ESMA shall be entrusted with the authorisation and supervision of data providers, including administrative sanctions. The supervisory regime shall require third-country data providers who wish to provide services for Union clients to have a permanent establishment in the Union;

(ii) data providers shall establish appropriate internal policies and procedures in relation to employees and other persons involved in the provision of their services. Such policies and procedures shall include internal control mechanisms and a compliance function;

(iii) data providers shall be submitted to annual external audits, ensuring the external oversight of all aspects of the provision of financial and non-financial market data;

(iv) the terms of the licence agreement concluded between data providers (combining data and price policies) shall be standardised and simplified. The definitions shall be harmonied to avoid any unjustified complexity;

(v) data providers shall take all reasonable measures to prevent, identify, manage and monitor conflicts of interest that may adversely affect the fair, reasonable, non-discriminatory, and transparent provision of financial and non-financial market data.

[AM 33 Yon-Courtin]

CHAPTER II

Operating conditions for investment firms

Unchanged provisions:
Article 21- Regular review of conditions for initial authorisation (Commission proposal - unchanged)
Article 22 General obligation in respect of on-going supervision (no changes)
Article 23 Conflicts of interest (no changes)
Article 26- Provision of services through the medium of another investment firm (no change)
Article 27- Obligation to execute orders on terms most favourable to the client (no change)
Article 28 Client order handling rules (no changes)
Article 29 Obligations of investment firms when appointing tied agents (no changes)
Article in section 3 -Market transparency and integrity (no changes)
Articles in section 4- SME growth markets (no changes)

Section 2

Provisions to ensure investor protection

Article 24

General principles and information to clients

1. Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in this Article and ~~*Article 24a to*~~ **[AM 404 Poulsen]** Article 25.

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

(a) ***to inform the client of the range of financial instruments assessed by the investment firm, and*** **to provide advice on the basis of an assessment of an appropriate range of financial instruments** ~~*suitable*~~ ***suited*** ***to the client's needs;*** **[AM 34 Yon-Courtin]** ***The range of financial instruments shall take into account the business model of the investment firm.*** **[AM 411 Seekatz, Ferber]**

(b) to recommend, ***taking into consideration its performance, level of risk, costs and charges reported pursuant to Article 16-a,*** **the most** ~~**cost**~~ **efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering similar features;**

~~***(c) to recommend, among the range of financial instruments identified as suitable to the client pursuant to Article 25(2), a product or products without additional features that are not***~~

~~*necessary to the achievement of the client's investment objectives and that give rise to extra costs.*~~ **[AM 35 Yon-Courtin, AM 423 Seekatz, Ferber, AM 424 Karas, AM 425 Poulsen]**

(c a) not to place the financial or other interest of the investment firm ahead of the interest of the client. **[AM 430 Benjumea]**

1b. Where investment firms are subject to an inducement ban, the conditions of this article shall be deemed fulfilled. The national competent authority might reverse this presumption if an investment firm does notcomply with the provisions in this article [AM 961 Nagtegaal, de Lange].

~~*The cost efficiency referred to in the first subparagraph, point (b), shall be determined on the basis of the investment firm's assessment of the instrument's net return expectations taking into account all implicit and explicit costs and charges.* [AM 36 Yon-Courtin]~~

ESMA shall organise and conduct a ~~mandatory~~ peer review in cooperation with national competent authorities regarding the implementation of the obligations described in this Article. **[AM 406 Heinäluoma, Lalucq, Tang, Repasi]**

~~*1aa. ESMA shall develop draft regulatory technical standards specifying:*~~
~~*(i) the criteria for the assessment of an appropriate range of financial instruments, and how those criteria are to be fulfilled where investment advice is provided on a non-independent basis and only financial instruments manufactured within the group of the investment firm providing advice are assessed;*~~
~~*(ii) for different categories of financial instruments, how return expectations are determined for the purpose of paragraph 1a, second subparagraph, of this Article, and whether and when past performances or simulated future performances are to be used where applicable.*~~

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

~~*The Commission is empowered to adopt delegated acts supplementing this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this Article in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.* [AM 37 Yon-Courtin]~~

1ac. When none of the financial instruments offered by the investment firm are in the best interest of the client, the investment firm shall refrain from making any advice or recommendation. **[AM 433 Benjumea]**

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

(a) design those financial instruments to meet the needs of an identified target market of end clients within the relevant category of clients;
(b) design their strategy for the distribution of the financial instruments, including in terms of marketing communication and marketing practices, in a way that is compatible with the identified target market;
(c) take reasonable steps to ensure that the financial instruments are distributed to the identified target market.

An investment firm shall understand the financial instruments they offer or recommend, assess the compatibility of the financial instruments with the needs of the clients to whom it provides investment services, also taking account of the identified target market of end clients as referred to in Article 16(3), and ensure that financial instruments are offered or recommended only when this is in the interest of the client.

3.

All information, ~~**including marketing communications,**~~ addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. ~~**Marketing communications shall be clearly identifiable as such.**~~

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:

(a) when investment advice is provided, the investment firm must, in good time before it provides investment advice, inform the client:

(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 financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm 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 investment firm will provide the client with a periodic assessment of the suitability of the financial instruments recommended to that client;

(iv) where the investment firm provides independent advice to a retail client, whether the range of financial instruments that is recommended is restricted or not to well-diversified, non-complex

as referred to in article 25(4)(a) and cost-efficient financial instruments only;

(v) how the recommended financial instruments take into account the diversification of the *retail* [AM 443 Benjumea] client's portfolio;

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

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

~~the information on all costs and associated charges must include information relating to both investment and ancillary services, including the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments;~~

(d) where the services are provided under the right of establishment or the freedom to provide services:
(i) the Member State in which the head office of the investment firm and, where appropriate, the branch offering the service is/are located;
(ii) the relevant national competent ~~*authority*~~ *authorities* [AM 444 Yon-Courtin] of such investment firm or where relevant, of such branch.'

~~The information about all costs and charges, including costs and charges in connection with the investment service and the financial instrument, which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the client to understand the overall cost as well as the cumulative effect on return of the investment, and where the client so requests, an itemised breakdown shall be provided. Where applicable, such information shall be provided to the client on a regular basis, at least annually, during the life of the investment.~~

~~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:~~
~~(i)~~

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

~~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.~~ **[COM proposal]**

5. The information referred to in paragraph~~s~~ 4 ~~and 9~~ shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis~~Member States may allow that information to be provided in a standardised format.~~ **Where this Directive does not require the use of a standardised format for the provision of that information, Member States may require that information to be provided in a standardised format.**

5a. Investment firms shall provide all information required to be provided by this Directive to clients or potential clients in electronic format, except where the client or potential client is a retail client or potential retail client who has requested receiving the information on paper, in which case that information shall be provided on paper, free of charge.

Investment firms shall inform retail clients or potential retail clients that they have the option of receiving the information on paper.

Investment firms shall inform existing retail clients 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. Investment firms shall inform those existing retail clients that they have the choice either to continue receiving information on paper or to switch to information in electronic format. Investment firms shall also inform existing retail clients 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 week period. Existing retail clients who already receive the information required to be provided by this Directive in electronic format do not need to be informed.

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

The guidelines referred to in the first subparagraph shall specify the following:

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

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

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

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

ESMA shall*, after consulting the competent authorities and stakeholders,* [AM 450 Seekatz, Ferber] by [18 months after the entry into force of the amending Directive], *develop, and update periodically, guidelines on the concept of particularly risky or complex ~~publish an opinion describing the characteristics of~~* financial instruments*. These guidelines shall describe the characteristics of financial products ~~taking due account of the specificities of the different types of instruments.~~ ~~which~~ that make them particularly risky or complex and which ~~shall therefore~~justify ~~making~~ them subject to the risk warnings referred to in the first subparagraph. ~~ESMA shall periodically review and update that list.~~* [AM 451 Yon-Courtin]

ESMA shall develop draft regulatory technical standards to further specify the format and content of such risk warnings *to retail clients* [AM 458 Benjumea], taking due account of the specificities of the different types of financial instruments and types of communications.

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

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

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

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

6. Where an investment service is offered as part of a financial product which is already subject to other provisions of Union law relating to credit institutions and consumer credits with respect to information requirements, that service shall not be additionally subject to the obligations set out in paragraphs 3, 4 and 5.

7. Where an investment firm informs the client that investment advice is provided on an independent basis, that investment firm shall:

(a) assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met and must not be limited to financial instruments issued or provided by:
(i) the investment firm itself or by entities having close links with the investment firm; or
(ii) other entities with which the investment firm has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided;
(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 clients ***in line with Article 24a***. Minor non-monetary benefits ~~***that are***~~ ***capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client or of a total value below EUR 100 per annum*** **[AM 464 Gruffat]** must be clearly disclosed and are excluded from this point.

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

~~**8. When providing portfolio management the investment firm shall 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 clients. Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are 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 shall be clearly disclosed and are excluded from this paragraph.**~~
~~**9. Member States shall ensure that investment firms are regarded as not fulfilling their obligations under Article 23 or under paragraph 1 of this Article where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service or an ancillary service, to or by any party except the client or a person on behalf of the client, other than where the payment or benefit:**~~
~~**(a) is designed to enhance the quality of the relevant service to the client; and**~~

~~(b) 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 the payment or benefit referred to in the first subparagraph, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service. 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.~~ **[COM proposal]**

~~*9a. 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 paragraph 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 1 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.*~~ **[AM 38 Yon-Courtin; COM proposal]**

10. An investment firm which provides investment services to clients shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its clients. In particular, it shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial

instrument to a retail client when the investment firm could offer a different financial instrument which would better meet that client's needs.

11. When an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.

Where the risks resulting from such an agreement or package offered to a retail client are likely to be different from the risks associated with the components taken separately, the investment firm shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.

ESMA, in cooperation with EBA and EIOPA, shall develop by 3 January 2016, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations laid down in paragraph 1.

12. Member States may, in exceptional cases, impose additional requirements on investment firms in respect of the matters covered by ~~*this*~~ Article ***24 and 24c of this Directive*** **[AM 465 Yon-Courtin]**. Such requirements must be objectively justified and proportionate so as to address specific risks to investor protection or to market integrity which are of particular importance in the circumstances of the market structure of that Member State.

Member States shall notify the Commission of any requirement which they intend to impose in accordance with this paragraph without undue delay and at least two months before the date appointed for that requirement to come into force. The notification shall include a justification for that requirement. Any such additional requirements shall not restrict or otherwise affect the rights of investment firms under Articles 34 and 35 of this Directive.

The Commission shall within two months from the notification referred to in the second subparagraph provide its opinion on the proportionality of and justification for the additional requirements.

The Commission shall communicate to Member States and make public on its website the additional requirements imposed in accordance with this paragraph.

Member States may retain additional requirements that were notified to the Commission in accordance with Article 4 of Directive 2006/73/EC before 2 July 2014 provided that the conditions laid down in that Article are met.

13. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in this Article**,** ~~**, Article 24a and Article 24b**~~ when providing investment or ancillary services to their clients, including:

(a) the conditions with which the information must comply in order to be fair, clear and not misleading;
(b) the details about content and format of information to clients in relation to client categorisation, investment firms and their services, financial instruments, costs and charges;
(c) the criteria for the assessment of a range of financial instruments available on the market;
~~**(d) the criteria to assess compliance of firms receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interest of the client.**~~

(d) the criteria to assess compliance of firms providing investment advice to retail clients~~**,**~~ ~~***notably those receiving inducement,***~~ **[AM 467 Seekatz, Ferber, AM 468 Heinäluoma, Lalucq,**

Repasi] with the obligation to act in the best interest of their clients as set out in paragraphs 1 and 1a.

In formulating the requirements for information on financial instruments in relation to point b of paragraph 4 information on the structure of the product shall be included, where applicable, taking into account any relevant standardized information required under Union law.

14. The delegated acts referred to in paragraph 13 shall take into account:
(a) the nature of the service(s) offered or provided to the client or potential client, taking into account the type, object, size and frequency of the transactions;
(b) the nature and range of 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 paragraphs 4 and 5, their classification as eligible counterparties.

Article 24a

Inducements

**1. Member States shall ensure that investment firms, when providing portfolio management, ~~*do not pay or receive any fee or commission, or provide or are provided with any*~~ *do not accept and retain fees, commissions or any monetary or* non-monetary ~~*benefit, in connection with*~~ *benefits paid or provided by any third party or a person acting on behalf of a third party in relation to* the provision of ~~*such the*~~ service, ~~*to or by any party except the client or a person on behalf of the client*~~ to clients.~~[AM 39 Yon-Courtin]~~

~~*2. Member States shall ensure that investment firms, when providing reception and transmission of orders or execution of orders to or on behalf of retail clients, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of such services, to or from any third-party responsible for the creation, development, issuance or design of any financial instrument on which the firm provides such execution or reception and transmission services, or any person acting on behalf of that third-party.*~~ **[AM 40 Yon-Courtin]**

~~*3. Paragraph 2 shall not apply to investment firms, when providing investment advice on a non-independent basis relating to one or more transactions of that client covered by that advice.*~~ **[AM 41 Yon-Courtin]**

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

~~*This paragraph shall not apply to financial instruments that are packaged retail investment products as referred to Article 4, point (1), of Regulation (EU) No 1286/2014.*~~ **[AM 42 Yon-Courtin, AM 510 Sailliet, AM 511 Poulsen, AM 512 Seekatz, Ferber]**

5. Paragraphs 1 ~~*and 2*~~ [AM 43 Yon-Courtin] shall not apply to the minor non-monetary benefits of a total value below EUR 100 per annum or of a scale and nature such that they could not be judged to impair compliance with the investment firm's duty to act in the best interest of the client, provided that they have been clearly disclosed to the client.

6. ~~Member States shall ensure that t~~The provision of research by third parties to an investment firm~~s~~ 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~~ third-party provider of research and execution services, establishing a methodology for remuneration, including how the total cost of research is generally taken into account when establishing the total charges for investment services~~identifying the part of any combined charges or joint payments for execution services and research that is attributable to research~~;

(b) the investment firm makes available to its clients its policy on separate or joint payments, as the case may be, for execution services and third-party research, including the type of information that may be provided in each case and, where relevant, how the investment firm

prevents or manages conflicts of interest pursuant to Article 23 when providing joint payments for execution services and research;

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

~~(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~~ Five* years after the *~~date of entry into force~~ end of the transposition period* of Directive (EU) [OP Please introduce the number of the amending Directive] and after having consulted ESMA and EIOPA, the Commission shall assess the *~~effects of third-party payments on retail investors, in particular in view of potential conflicts of interest and as regards the availability of independent advice, and shall evaluate the~~* impact of the relevant provisions of Directive

(EU) [OP Please introduce the number of the amending Directive] on it. ~~*If necessary to prevent*~~ ***the potential conflicts of interest associated with inducements, the evolution of costs, the overall level of retail investment in capital markets,*** **consumer** ***protection*** ~~***detriment, the Commission shall propose legislative amendments to the European Parliament***~~ ***protection*** **and the** ~~***Council***~~ ***relevance of distribution rules.*** **[AM 44 Yon-Courtin]**

Article 24b

Information on costs, associated charges and third-party payments

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

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

(a) all explicit and implicit *costs*, and associated charges, *including all costs and charges relating to the distribution of the financial instrument, and the cost of advice, where relevant*, [AM 542 Heinäluoma, Lalucq, Tang, Repasi] charged by the investment firms or other parties where the ~~retail~~ client has been directed to such other parties, for the investment services and/or ancillary services provided to the ~~*retail*~~ client or potential ~~*retail* [AM 543 Benjumea]~~ client;

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

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

(d) ~~how the *retail*~~Options on how the retail [AM 546 Benjumea] client may pay for them.

Member States shall ensure that investment firms aggregate the information on all costs and associated charges to enable the *retail* client to understand the overall cost, of the financial instruments ~~*and the cumulative effect on return of the investment*~~ [AM 550 Seekatz, Ferber]. *For retail clients,* [AM 551 Benjumea] Member States shall ensure that investment firms express the overall cost in monetary terms and percentages calculated ~~*up to the maturity date of the financial instrument or*~~ over the following periods:

- for financial instruments ~~*without a maturity date*~~, *which are packaged retail investment products, over* the holding period recommended by the investment firm;

- for other financial instruments, up to the maturity date of the financial instrument; ~~or in the absence thereof,~~

- for financial instruments without a maturity date, and which are not packaged retail investment products, over a* holding ~~*periods of 1, 3 and 5 years*~~ *period of 1 year.

***(d a) The information referred to in the second subparagraph, point (a) to (c), shall be accompanied by an appropriate explanation, in a standardised and comprehensible language for an average retail client, on the impact of the costs, charges and any third-party payments on the expected return* [AM 547 Heinäluoma, Lalucq, Tang, Repasi].**

***Only the information about costs and charges which are not caused by the occurrence of underlying market risk shall be aggregated. Investment firms shall explicitly inform their clients of their right to request the provision of an itemised breakdown and shall provide such an itemised breakdown at the request of the client.* [AM 548 Yon-Courtin, AM 549 Heinäluoma, Lalucq, Repasi]**

The third-party payments paid or received by the investment firm in connection with the investment service provided to the client shall be itemised separately. The investment firm shall disclose the cumulative impact of such third-party payments, including any recurring third-party payments, on the net return over the holding period as mentioned in the preceding subparagraph. The purpose of the third-party payments and their impact on the net return shall be explained in a standardised way and in a comprehensible language for ~~an average~~ *a* [AM 554 Chastel] retail client.

Where the amount of ~~any costs, associated charges or~~ third-party payments cannot be ascertained prior to the provision of the relevant investment or ancillary service, the method of calculating the amount shall be clearly disclosed to the *retail* [AM 560 Benjumea] client in a manner that is comprehensible, accurate and understandable for ~~an average~~ *a* [AM 558 Chastel] retail client. *The firm shall also provide its clients with information of the exact amount of the third-party payments received or paid on an ex-post basis.* [AM 557 Yon-Courtin]

***~~Investment firms providing investment services to professional clients shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, with such clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.~~* [AM 561 Seekatz, Ferber]**

***~~Investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this paragraph, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients.~~* [AM 565 Nesci, AM 566 Seekatz, Ferber, AM 567 Zanni, Grant, Rinaldi]**–

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

(a) the relevant format for the provision of any costs, associated charges and third-party payments, by the investment firm to its retail client or potential retail client, prior to the *provision of any investment services, ancillary services, and the* [AM 569 Heinäluoma, Lalucq, Repasi] conclusion of any transaction on financial instruments;

(aa) *the relevant format for the provision of the annual statement on all costs and associated charges by the investment firms to its retail client. [AM 571 Heinäluoma, Lalucq, Repasi]*

(b) the standard terminology and *brief and concise* related explanations to be used by investment firms for the disclosure ~~and calculation~~ [AM 573 Seekatz, Ferber]– of any costs, associated charges and third-party payments charged directly or indirectly by firms to the *retail* client or potential *retail* client in connection with the provision of any investment service(s) or ancillary service(s) and the manufacturing and managing of financial instruments to be recommended or marketed to the *retail* client or potential *retail* [AM 574 Benjumea] 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.

(a a) The calculation method to be applied by firms in order to calculate the percentage of overall costs referred to in the third subparagraph of Article 24b(1), including whether cost figures shall be computed based on costs accrued or effectively disbursed over the period considered, as well as whether and when cost figures should be annualized. These

specifications shall also apply to the annual statement on costs referred to in paragraph 4. **[AM 570 Yon-Courtin]**

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

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

3. Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the information on costs, *~~and~~* charges, *and third-party payments,* the investment firm may provide the information on costs, *~~and~~* charges *and third-party payments* [AM 576 Seekatz, Ferber] either in electronic format or on paper, where requested by a retail client, without undue delay after the conclusion of the transaction, provided that the following conditions are met:

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

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

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

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

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

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

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

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

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

(c) the total taxes, including any stamp duty, transactions tax, withholding tax and any other taxes where levied by the investment firm, borne by the retail client for the total portfolio;

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

(e) the net annual performance of the portfolio of the retail client and the annual performance of each of the financial instruments included in this portfolio. *Investment firms shall inform their clients of their right to request the provision of such detailed breakdowns.* [AM 585 Yon-Courtin]

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

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

~~Upon its request, the retail client shall be entitled to receive each year~~ Investment firms shall inform retail clients explicitly about the possibility to ask for **a detailed breakdown of the information referred to under point (a) to (c) above per financial instrument owned during the relevant period** ***and shall provide such an itemised breakdown at the request of the client*** **[AM 591 Heinäluoma, Lalucq, Repasi]** ***~~as well as for each tax borne by the retail client. When several investment firms need to provide an annual statement to the client, it is sufficient to provide one statement that contains all the information foreseen in subparagraph 2 and 3~~.*** **[AM 590 Seekatz, Markus Ferber]**

Without prejudice the requirement in this paragraph, where sufficient information is not available on a specific product to draw up an annual statement, the requirements with respect to the annual statement must only be applicable to new contracts ~~ly agreed-upon retail investment products~~ after the entry into force of this Directive ~~RIS~~ [AM 911 Nagtegaal]

~~4 a. The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client~~ **~~[AM 592 Heinäluoma, Lalucq, Tang, Repasi]~~**

The annual statement on costs and performance for retail clients shall be presented in an easy-to-understand way for an average retail client. ***It shall be communicated to the client no later that 31 March each year.*** **Information on costs, associated charges and any third-party payments shall be presented using the terminology and explanations** ***~~as described~~ and the calculation method specified in the regulatory technical standards referred to*** **[AM 594 Yon-Courtin] under paragraph 2 of this Article.** [AM 592 Heinäluoma, Lalucq, Tang, Repasi]

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

Article 24c

Marketing Communications and Practices

1. Member States shall ensure that marketing communications *~~addressed to retail clients~~* [AM 597 Benjumea] are clearly identifiable as such and clearly identify the investment firms responsible for their content and distribution, regardless of whether the communication is made directly or indirectly by the investment firm.

2. Member States shall ensure that marketing communications are developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target *~~audience~~ market clients* [AM 599 Benjumea] and where related to a specific financial instrument to the target market identified pursuant to Article 24(2).

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

The presentation of the essential characteristics of the financial instruments and services *~~included~~ made available* [AM 608 Seekatz, Ferber] in the marketing communications provided or made accessible to retail or potential retail clients, shall ensure that they can easily understand the key features of the financial instruments or services as well as the *costs and* [AM 607 Benjumea] main risks associated with them.

3. Member States shall ensure that marketing practices are developed and used in a manner that is fair and not misleading, and shall be appropriate for the target *~~audience~~ market* [AM 609 Benjumea]. *Member States shall ensure that investment firms carrying out profiling of individuals for the purpose of this paragraph, fully comply with Regulation (EU) 2016/679.* [AM 610 Yon-Courtin]

4. Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by *~~the~~ a* [AM 45 Yon-Courtin] distributor, the manufacturer shall be responsible for the content of such marketing communication and its update. The distributor shall be responsible for the use of this marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified for the target market.

Where an investment firm *that* [AM 46 Yon-Courtin] offers or recommends financial instruments which it does not manufacture, organises its own marketing communication, it shall be fully responsible for its appropriate content, update and use, in line with the identified target market and in particular in line with the identified client categorisation.

4a. Where an investment firm uses the services of a third party that is remunerated or incentivised through non-monetary compensation by such investment firm, in order to promote investments in one or several financial instruments or the use of investment or ancillary services, and where such third party carries out such promotion through public social media platforms ("finfluencer"), the investment firm shall comply with the following obligations:

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

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

(c) it shall regularly check that the activity of the finfluencers whose services it relies on complies with paragraphs 1 to 4. **[AM 47 Yon-Courtin]**

5. Member States shall ensure, investment firms make annual reports to the firm's management body on the use of marketing communications and strategies aimed at marketing practices, *provided or made accessible to retail clients or potential retail clients,* [AM 615 Benjumea] the compliance with relevant obligations on marketing communications and practices under this Directive and on any signalled irregularities and proposed solutions.

6. Member States shall ensure that national competent authorities can take timely and effective action in relation to any marketing communication *disseminated in their territory* or marketing practice *taking place in their territory* [AM 617 Yon-Courtin] that do not comply with requirements ~~*under*~~ *laid down in* [AM 48 Yon-Courtin] paragraphs 1 to 3.

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

Such records shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years. Those records shall be retrievable by the investment firm upon request of the competent authority.

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

(a) the content of the marketing communication;

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

(c) the date and duration of the marketing comm¬¬unication including relevant starting and end times;

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

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

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

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

8. The Commission is empowered to adopt a delegated act in accordance with Article 89 to supplement this Directive by specifying ~~*the following*~~ [AM 49 Yon-Courtin]:

(a) the essential characteristics of financial instrument(s) or investment and ancillary service(s) to be disclosed in all marketing communications targeting retail clients or potential retail clients and any other relevant criteria to ensure that those essential characteristics appear in a prominent way and are easily accessible by an average retail client, regardless of the means of communication;

(b) the conditions with which marketing communications and marketing practices should comply in order to be fair, clear, not misleading, balanced in terms of presentation of advantages*, costs* [AM 626 Heinäluoma, Lalucq, Repasi] and risks, and appropriate in terms of content and distribution channels for the target audience or, where applicable, the target market.

Article 24d

Professional requirements

1. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Articles 24, 24a, 24b, 24c and Article 25 and *~~when providing services to retail clients~~* [AM 627 Benjumea] 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 *~~retail~~* [AM 631 Benjumea] clients on behalf of the investment firm possess and maintain at least the knowledge and competence set out in Annex V and undertake at least 15 hours of professional training and development per year, during work hours*.*

***Member States shall have in place and publish mechanisms to control effectively and assess the knowledge and competence of natural persons giving investment advice to clients on behalf of investment firms. The mechanisms should in particular define in which cases additional hours of professional training and development must be required from an employee or intermediary beyond the minimum of 15 hours per year, based on the assessment of knowledge and competence* [AM 709 Gruffat]. *Appropriate number of hours of the professional training should be allocated by national competent authorities to the minimum necessary knowledge in environmentally and socially sustainable investment, including how to consider and integrate sustainability factors and client's sustainability preferences into the advisory processes.* [AM 706 Yon-Courtin, 707 Heinäluoma,709 Gruffat] *~~Seven hours of the professional training shall be allocated to understanding the concept of environmentally and socially sustainable investment and how to consider and integrate sustainability factors and client's sustainability preferences into the advisory processes.~~ Member States may provide that continuing vocational training acquired and required as a part of another professional qualification may be considered valid. Member States can require that* compliance with the criteria set out in Annex V as well as the yearly successful completion of the continuous professional training and development shall be proven by a certificate or any other document *recognised by the Member State or by the European Union proving the successful completion of the training.* [AM 628 Yon-Courtin, AM 630 Chastel, 709 Gruffat].**

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

Article 25

Assessment of suitability and appropriateness and reporting to clients

~~**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 this Article. Member States shall publish the criteria to be used for assessing such knowledge and competence.**~~ **[COM proposal]**

1. The investment firm shall assess the suitability or appropriateness of the relevant financial instruments(s) or investment services or transaction(s) to be recommended to, or demanded by, his or her client or potential client in good time before respectively i) the provision of the investment advice or portfolio management or ii) the execution or reception and transmission of the order. Each of these assessments shall be determined on the basis of information about the client or potential client as obtained by the investment firm, in accordance with the below requirements.
The investment firm shall ensure that the purpose of the suitability or appropriateness assessment is explained to the client or potential client before any information is requested from him or her. The clients and potential clients shall be warned of the following consequences:
(a) the provision of inaccurate or incomplete information shall impact negatively the quality of the assessment to be made by the investment firm;
(b) the absence of information shall prevent the firm to determine whether the service or financial instrument envisaged is suitable or appropriate for them and to proceed with the recommendation or the execution of the client's order. Such explanation and warning shall be provided in a standardised format.
The investment firm shall, upon request of the retail client, provide them with a report on the information collected for the purpose of the suitability or appropriateness assessment. Such report shall be presented in a standardised format.
ESMA shall develop draft regulatory technical standards to determine the explanation and warning referred to in paragraph 1, second subparagraph, and the format and content of the report referred to in paragraph 1, third subparagraph.
ESMA shall submit the draft regulatory technical standards to the Commission by [OJ: insert date 18 months after the date of entry into force].
Power is conferred to the Commission to adopt those regulatory technical standards referred to above in the fourth subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation. (EU) No 1095/2010.

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

Investment firms inform the client that there are two sorts of investment advice: Investment advice with regard to the concrete financial instrument and portfolio advice (investment advice with regard to the portfolio) and explain the differences. On this ground, the client can decide which sort of advice they ~~likes~~ want to receive. **[AM 638 Seekatz, Ferber]**

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

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

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

3. Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 2, ask the ***retail*** client or potential ***retail*** **[AM 654 Benjumea]** client to provide information regarding **~~that person's~~ their** knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded***~~, and for the retail client or potential retail client,~~*** **[AM 652 Poulsen, Kovařík]** ***~~the capacity to bear full or partial losses and risks tolerance~~*** **[AM 655 Yon-Courtin, AM 653 Seekatz, Ferber, AM 654 Benjumea]** so as to enable the investment firm to assess whether the investment service or product 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 ~~considers~~**, on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. ***When the service is provided to a retail client,*** that **[AM 656 Benjumea]** warning may be provided in a standardised format **and shall be recorded.**

~~Where clients or potential clients do not provide the information referred to under the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the investment firm shall warn them that the investment firm is not in a position to determine whether the service or product envisaged is appropriate for them. That warning may be provided in a standardised format.~~

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

ESMA shall develop draft regulatory technical standards to determine the format and content of the warning *to retail clients* [AM 657 Benjumea] referred to in subparagraph 3.

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

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

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 may be provided in a standardised format;
(d) the investment firm complies with its obligations under Article 23.

ESMA shall develop draft regulatory technical standards to determine the format and content of warning *to retail clients* [AM 662 Benjumea] referred to in the first subparagraph, point (c).

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

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

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 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 ([12]), 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 **is empowered to supplement this Directive by** ~~**shall be empowered to**~~ adopt**ing** delegated acts in accordance with Article 89 to ensure that investment firms comply with the principles set out in paragraphs ~~**21**~~ to 6 of this Article when providing investment or ancillary services to their clients, including information to obtain when assessing the suitability or appropriateness of the services and financial instruments for their clients, criteria to assess non-complex financial instruments for the purposes ~~**of point (a)(vi)**~~ of paragraph 4**, point (a)(vi),** of this Article, the content and the format of records and agreements for the provision of services to clients and of periodic reports to clients on the services provided. Those delegated acts shall take into account:

(a) the nature of the 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.

(c a) the criteria for assessing the alignment of financial products with a client's sustainability preferences and outlining the procedures for tailoring a portfolio or investment product offering to meet a client's sustainability preferences. **[AM 663 Tang, Lalucq, AM 665 Canfin]**

9. [...]

10. [...]

11. [...]

Article 29a- **Services provided to professional clients**

1. The requirements laid down ~~***in point (c) of***~~ ***Article 24 and*** Article ~~***24(4)***~~ ***24a and Article 24b*** shall not apply to services provided to professional clients ~~***except for investment advice and portfolio management.***~~ **[AM 667 Seekatz, Ferber]**

2. The requirements laid down in the third subparagraph of Article 25(2) and in Article 25(6) shall not apply to services provided to professional clients, unless those clients inform the investment firm either in electronic format or on paper that they wish to benefit from the rights provided for in those provisions.
3. Member States shall ensure that investment firms keep a record of the client communications referred to in paragraph 2.

Article 30

Transactions executed with eligible counterparties

1. Member States shall ensure that investment firms authorised to execute orders on behalf of clients, and/or to deal on own account, and/or to receive and transmit orders have the possibility of bringing about or entering into transactions with eligible counterparties without being obliged to comply with **Article 16(3a),** Article 24, ~~***with the exception of paragraphs 5, 5a and 5c thereof,***~~ **Article 24b**~~***,with the exception of paragraph 1***~~ **[AM 668 Seekatz, Ferber], Article 24c,** Article 25, Article 27 and Article 28(1), in respect of those transactions or in respect of any ancillary service directly relating to those transactions.

Member States shall ensure that, in their relationship with eligible counterparties, investment firms act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business.

2. Member States shall recognise as eligible counterparties for the purposes of this Article investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under Union law or under the national law of a Member State, national governments and their corresponding offices including public bodies that deal with public debt at national level, central banks and supranational organisations.

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

3. Member States may also recognise as eligible counterparties other undertakings meeting pre-determined proportionate requirements, including quantitative thresholds. In the event of a transaction where the prospective counterparties are located in different jurisdictions, the investment firm shall defer to the status of the other undertaking as determined by the law or measures of the Member State in which that undertaking is established.

Member States shall ensure that the investment firm, when it enters into transactions in accordance with paragraph 1 with such undertakings, obtains the express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty. Member States shall allow the investment firm to obtain that confirmation either in the form of a general agreement or in respect of each individual transaction.

4. Member States may recognise as eligible counterparties third country entities equivalent to those categories of entities referred to in paragraph 2.

Member States may also recognise as eligible counterparties third country undertakings such as those referred to in paragraph 3 on the same conditions and subject to the same requirements as those laid down in paragraph 3.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to specify:

(a) the procedures for requesting treatment as clients under paragraph 2;

(b) the procedures for obtaining the express confirmation from prospective counterparties under paragraph 3;

(c) the pre-determined proportionate requirements, including quantitative thresholds that would allow an undertaking to be considered to be an eligible counterparty under paragraph 3.

CHAPTER III

Rights of investment firms

Unchanged provisions:
Article 34 Freedom to provide investment services and activities (no changes)
Article 35 Establishment of a branch (no changes)
Article 36 Access to regulated markets (no changes)
Article 37 Access to CCP, clearing and settlement facilities and right to designate settlement system (no changes)
Article 38 Provisions regarding CCPs, clearing and settlement arrangements in respect of MTFs (no changes)

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~~ [AM 50 Yon-Courtin] Member State through the freedom to provide investment services and activities and ancillary services;

(c) for each ~~host~~ [AM 51 Yon-Courtin] Member State, the total number and the categories of clients corresponding to the services and activities referred to in point (b), and provided during the relevant period ending on the 31 December and a breakdown between professional and non-professional clients;

(d) the number of complaints referred to under Article 75 received from clients and interested parties in each ~~host~~ [AM 52 Yon-Courtin] Member State;

(e) the type of marketing communications used in ~~host~~ [AM 53 Yon-Courtin] Member States.

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

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

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

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

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

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

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

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

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

Remains unchanged:

Title II - CHAPTER IV - *Provision of investment services and activities by third country firms (no changes)*

TITLE III- REGULATED MARKETS (no changes)

TITLE IV- POSITION LIMITS AND POSITION MANAGEMENT CONTROLS IN COMMODITY DERIVATIVES AND REPORTING (no changes)

TITLE VI

COMPETENT AUTHORITIES

Unchanged provisions:

Article 67 Designation of competent authorities (no changes)
Article 68 Cooperation between authorities in the same Member State (no changes)
Article 71 Publication of decisions (no changes)
Article 72 Exercise of supervisory powers and powers to impose sanctions (no changes)
Article 74 Right of appeal (no changes)
Article 75 Extra-judicial mechanism for consumers complaints (no changes)
Article 76 Professional secrecy (no changes)
Article 77 Relations with auditors (no changes)
Article 78 Data protection (no changes)
Article 79 Obligation to cooperate (no changes)
Article 80 Cooperation between competent authorities in supervisory activities, for on-site verifications or investigations (no changes)
Article 81 Exchange of information (no changes)
Article 82 Binding mediation (no changes)
Article 83 Refusal to cooperate (no changes)
Article 84 Consultation prior to authorisation (no changes)
Article 85 Powers for host Member States (no changes)
Article 87-Cooperation and exchange of information with ESMA (no changes)
CHAPTER III - Cooperation with third countries (no changes)

CHAPTER I

Designation, powers and redress procedures

Article 69- **Supervisory powers**

1. Competent authorities shall be given all supervisory powers, including investigatory powers and powers to impose remedies, necessary to fulfil their duties under this Directive and under Regulation (EU) No 600/2014.
2. The powers referred to in 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;

(ca) carry out mystery shopping activities;

(d) require existing recordings of telephone conversations or electronic communications or other data traffic records held by an investment firm, a credit institution, or any other entity regulated by this Directive or by Regulation (EU) No 600/2014;
(e) require the freezing or the sequestration of assets, or both;
(f) require the temporary prohibition of professional activity;

(g) require the auditors of authorised investment firms, regulated markets and data reporting services providers to provide information;
(h) refer matters for criminal prosecution;
(i) allow auditors or experts to carry out verifications or investigations;
(j) require or demand the provision of information including all relevant documentation from any person regarding the size and purpose of a position or exposure entered into via a commodity derivative, and any assets or liabilities in the underlying market;
(k) require the temporary or permanent cessation of any practice or conduct that the competent authority considers to be contrary to the provisions of Regulation (EU) No 600/2014 and the provisions adopted in the implementation of this Directive and prevent repetition of that practice or conduct;

(ka) suspend or prohibit, for a maximum duration of 1 year, marketing communications or practices used by an investment firm in their Member State, where there are reasonable grounds to believe that this Directive or Regulation (EU) No 600/2014 have been infringed.;
(l) adopt any type of measure to ensure that investment firms, regulated markets and other persons to whom this Directive or Regulation (EU) No 600/2014 applies, continue to comply with legal requirements;
(m) require the suspension of trading in a financial instrument;
(n) require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements;
(o) request any person to take steps to reduce the size of the position or exposure;
(p) limit the ability of any person from entering into a commodity derivative, including by introducing limits on the size of a position any person can hold at all times in accordance with Article 57 of this Directive;
(q) issue public notices;
(r) 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 Regulation (EU) No 600/2014;
(s) suspend the marketing or sale of financial instruments or structured deposits where the conditions of Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are met;
(t) suspend the marketing or sale of financial instruments or structured deposits where the investment firm has not developed or applied an effective product approval process or otherwise failed to comply with Article 16(3) of this Directive;
(u) require the removal of a natural person from the management board of an investment firm or market operator;

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

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

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

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

(w) to impose the use of risk warnings by investment firms in information materials, including marketing communications *provided or made accessible to retail clients or potential retail*

***clients,* [AM 676 Benjumea]–*related to particularly risky financial instruments* [AM 54 Yon-Courtin] where those instruments could pose a serious threat to investor protection.**

***(wa) use webscraping techniques and tools to collect online data for monitoring, surveillance, detection and investigation purposes.* [AM 55 Yon-Courtin]**

By 3 July 2017 ◄ , the Member States shall notify the laws, regulations and administrative provisions transposing paragraphs 1 and 2 to the Commission and ESMA. They shall notify the Commission and ESMA without undue delay of any subsequent amendment thereto.

Member States shall ensure that mechanisms are in place to ensure that compensation may be paid or other remedial action be taken in accordance with national law for any financial loss or damage suffered as a result of an infringement of this Directive or of Regulation (EU) No 600/2014.

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

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

Article 70- **Sanctions for infringements**

[no changes to paragraphs 1 and 2]

3. Member States shall ensure that at least an infringement of the following provisions of this Directive or of Regulation (EU) No. 600/2014 shall be regarded as an infringement of this Directive or of Regulation (EU) No. 600/2014:

(a) with regard to this Directive:

‘(xxxvii) Article 16-a(1) to (8);

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

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

‘(xxxx) Article 24b(1), (3) and (4);

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

‘(xxxxii) Article 35a(1);’;and

(b) **[..]**

[the rest of the article is unchanged]

Article 73- **Reporting of infringements**

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.**

The mechanisms referred to in the first subparagraph shall include at least:

(a) specific procedures for the receipt of reports on potential or actual infringements and their follow-up, including the establishment of secure communication channels for such reports. **Those procedures shall also include the creation, on the front page of each competent authority's website, of a link to a simple reporting form allowing any person to report potential or actual infringements to Union Law or national law. Member States shall require competent authorities to analyse, without undue delay, all reports submitted via this reporting form;**

(b) appropriate protection for employees of financial institutions who report infringements committed within the financial institution at least against retaliation, discrimination or other types of unfair treatment;

(c) protection of the identity of both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, at all stages of the procedures unless such disclosure is required by national law in the context of further investigation or subsequent administrative or judicial proceedings.

2. Member States shall require investment firms, market operators, APAs and ARMs authorised in accordance with Regulation (EU) No 600/2014 that have a derogation in accordance with Article 2(3) of that Regulation, credit institutions in relation to investment services or activities and ancillary services and branches of third-country firms to have in place appropriate procedures for their employees to report potential or actual infringements internally through a specific, independent and autonomous channel.

CHAPTER II

- Cooperation between the competent authorities of the Member States and with ESMA

Unchanged articles:
Article 86- Precautionary measures to be taken by host Member States (Commission proposal - unchanged)

Article 87a
Collaboration platforms

1. ESMA may, in the case of justified concerns about negative effects on investors, on its own initiative or at the request of one or more competent authorities, set up and coordinate a collaboration platform, to strengthen the exchange of information and to enhance collaboration between the relevant supervisory authorities where an investment firm carries out, or intends to carry out, activities which are based on the freedom to provide services or the freedom of establishment and where such activities are of relevance with respect to the host Member State's market. If a collaboration platform is set up at the request of a competent authority, that competent authority shall notify the competent authority of the home Member State of its justified concerns about negative effects on investors.
2. Paragraph 1 shall be without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.
3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.
4. Without prejudice to Article 35 of Regulation (EU) No 1095/2010, at the request of ESMA, the relevant competent authorities shall provide all necessary information in a timely manner.
5. Where two or more competent authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, ESMA may, at the request of any relevant competent authority or on its own initiative, assist the competent authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1095/2010.
6. In the event of disagreement within the platform and where there are serious concerns about negative effects on investors or about the content of an action or inaction to be taken in relation to an investment firm, ESMA may~~,~~ *~~in accordance with Article 16 of Regulation (EU) No 1095/2010, issue a recommendation to~~ decide to initiate and coordinate joint on-site inspections. ESMA* shall invite the competent authority of the home Member State *~~to consider the concerns of~~ as well as* other *relevant* competent authorities *~~concerned and to launch a~~ of the collaboration platform to participate in such* joint on-site inspection *~~together with other competent authorities concerned~~*. [AM 56 Yon-Courtin]

New TITLE VIA
FINANCIAL EDUCATION

Article 88a

Financial education of retail clients and prospective retail clients

1. Member States shall ***define and implement information and educational actions in order to*** **promote** ~~***measures that support the***~~ ***and increase consumers*** **education** ~~***of retail clients and prospective retail clients***~~ ***and knowledge*** **[AM 679 Yon-Courtin] in relation to responsible investment when accessing investment services or ancillary services.**

Member States shall consider the contribution of national competent authorities, universities and relevant stakeholders when designing the educational instruments to promote financial literacy. **[AM 685 Pereira].** ***Member States shall duly consider, in this regard, to introduce compulsory teaching content in their national school curricula.*** **[AM 681 Karas]**

Member States shall fund consumer organisations and independent investor or shareholder organisations that support the support the education of retail clients and prospective retail clients in relation to responsible investment when accessing investment services or ancillary services. **[AM 680 Heinäluoma, Lalucq, Repasi]**

1a. National competent authorities shall engage in a dialogue and carry out, at their own initiative, peer reviews to assess the applicability of best practices to their national system. **[AM 685 Kovařík]**

1b. The Commission, in collaboration with the European Supervisory Authorities (ESAs), the European Investment Bank and the European Central Bank shall:
(a) facilitate cooperation and exchange of best practices among Member States and stakeholders active in education and finance;
(b) establish clear targets on financial literacy;
(c) establish a Platform on Financial education and literacy, which shall be composed of representatives of:
-each Member State in the education and finance sectors, designated by the national competent authorities;
- the ESAs;
- the European Central Bank;
- the European Investment Bank;
- European and national consumer associations.
International organisations, and other public and private stakeholders may be invited on an ad hoc basis.
The Platform shall be chaired by the Commission. Representatives shall be appointed for a two-year renewable mandate.
Member States shall promote and take measures for the development of financial literacy skills.

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

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

1c. Member states are encouraged to:

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

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

The Commission and Member States shall aim at strengthening the cooperation in the field of financial education within the European Education Area, as for example through the Erasmus+ Teacher's academy' initiative. Member States are encouraged to use the existing tools and EU funding programmes at Union and national level in order to promote, support and enable financial education and training, and ensure the mutual recognition of diplomas across the European Union. **[AM 682 Yon-Courtin]**

Article 88b

Financial education and marketing communication

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

TITLE VII

DELEGATED ACTS

Unchanged articles:

Article 89a Committee procedure (current text - unchanged)

Article 89- Exercise of the delegation (Commission proposal - unchanged)

Omnibus Directive **FINAL PROVISIONS (unchanged)**

(also applicable for following compromises: IDD and Solvency II/UCITS/AIFMD)

MIFID II Annexes
(Annex II and V are amended, the rest of the annexes remain unchanged)

ANNEX II

PROFESSIONAL CLIENTS FOR THE PURPOSE OF THIS DIRECTIVE = COM proposal

Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered to be professional client, the client must comply with the following criteria:

I. CATEGORIES OF CLIENT WHO ARE CONSIDERED TO BE PROFESSIONALS

The following shall all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Directive.

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country:
(a) Credit institutions;
(b) Investment firms;
(c) Other authorised or regulated financial institutions;
(d) Insurance companies;
(e) Collective investment schemes and management companies of such schemes;
(f) Pension funds and management companies of such funds;
(g) Commodity and commodity derivatives dealers;
(h) Locals;
(i) Other institutional investors;

(2) Large undertakings meeting two of the following size requirements on a company basis:

— balance sheet total : EUR 20 000 000

— net turnover : EUR 40 000 000

— own funds : EUR 2 000 000

(3) National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the investment firm, the client is deemed to be a professional client, and will be treated as such unless the investment firm and the client agree otherwise. The investment firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided when a client who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement shall specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

II. CLIENTS WHO MAY BE TREATED AS PROFESSIONALS ON REQUEST

II.1. Identification criteria

Clients other than those mentioned in section I, including public sector bodies, local public authorities, municipalities and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules.

Investment firms shall therefore be allowed to treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. Those clients shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Section I.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed **authorised** under **the present Directive or other EU** Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.

In the course of that assessment, as a minimum, two of the following criteria shall be satisfied:

— the client has carried out transactions, in significant size, on the relevant market **on a regular basis** ~~at an average frequency of 10 per quarter over the previous four quarters~~,

ESMA shall develop draft - regulatory technical standards to determine the frequency and the size of the transactions that need to be carried out for relevant market categories.

ESMA shall submit those draft regulatory technical standards to the Commission by [OJ: insert date 6 months after the date of entry into force].

Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Articles 10 to 14 of Regulation. (EU) No 1095/2010.' [AM 1158 Seekatz, Ferber; 1159 Kovarik, 1172 Hansen]

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

— the client works or has worked in the financial **sector or in another relevant sector in relation to the investment decision or has undertaken capital market activities requiring to buy and sell financial instruments and/or to manage a portfolio of financial instruments for** at least one year in a professional position, which requires knowledge of the transactions or services envisaged**.[AM 1167 Benjumea]**

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

Member States may adopt specific criteria for the assessment of the expertise and knowledge of municipalities and local public authorities requesting to be treated as professional clients. Those criteria can be alternative or additional to those listed in the fifth paragraph.

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.

II.2. Procedure

Those clients may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

—
they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,
—
the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose,
—
they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section II.1.

However, if clients have already been categorised as professionals under parameters and procedures similar to those referred to above, it is not intended that their relationships with investment firms shall be affected by any new rules adopted pursuant to this Annex.

Firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the investment firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm shall take appropriate action.

ANNEX V
MINIMUM PROFESSIONAL KNOWLEDGE AND COMPETENCE REQUIREMENTS
(as referred to in Article 24d(2))

(a) understand the key characteristics, risks and features of the financial instruments being offered or recommended, including any general tax implications to be incurred by the client in the context of transactions;
(b) understand the total costs and charges to be incurred by the client in the context of the type of investment product being offered or recommended and the costs related to the provision of the advice and any other related services being provided;
(c) understand how the type of investment product provided by the firm may not be suitable for the client, having assessed the relevant information provided by the client against changes that have occurred since the relevant information was gathered;
(d) understand how financial markets function and how they affect the value and pricing of financial instruments offered or recommended to clients;
(e) understand the impact of macro-economic developments, national/regional/global events on financial markets and on the value of financial instruments being offered or recommended to clients;
(f) understand the difference between past performance and future performance scenarios as well as the limits of forecasting;

(g) understand the general implications of the main elements of the financial regulatory framework;
(h) assess data relevant to financial instruments offered or recommended to clients such as key information documents, prospectuses, financial statements, or financial data;
(i) understand specific market structures for the type of financial instruments offered or recommended to clients;
(j) understand the valuation principles for the type of financial instruments offered or recommended to clients;
(k) understand the fundamentals of managing a portfolio, including being able to understand the implications of diversification regarding individual investment alternatives;
(l) understand the concept of ***environmentally and socially*** **[AM 1173 Yon-Courtin]** sustainable investment and how to consider and integrate sustainability factors and client's sustainability preferences into the advisory processes.